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Supreme Court of the United States

OCTOBER TERM, 1956

No. 1055

ALLEN D. TURNER, Petitioner

v.

UNITED STATES OF AMERICA

Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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Supreme Court of the United States

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TO THE SUPREME COURT OF THE UNITED STATES:

The petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit affirming the judgment of conviction of petitioner by the United States District Court for the Southern District of New York for a violation of the Universal Military Training and Service Act.

OPINIONS BELOW

There is an opinion of the Court of Appeals. While it is not yet reported it appears in the record. The court affirmed

on the opinion of the District Court. (Appendix A, p. 26, *infra*) The opinion of the District Court is not reported. (R. 7-25)[1]

JURISDICTION

The judgment of the Court of Appeals was entered in this case on May 7, 1957. (SeeAppendix B, *infra*, page 35.) The time for filing this petition for writ of certiorari expires June 6, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254 (1). (See also Rules 37 (b) (2) and 45 (a), Federal Rules of Criminal Procedure.) The District Court had jurisdiction under 18 U. S. C. § 3231.

QUESTIONS PRESENTED

I.

Where petitioner registered with his local board in the Northern District of New York, was ordered by his local board to perform civilian work in the Northern District of New York, thereafter was relieved of such work because of his physical condition but was subsequently ordered by the State Director—and not assigned by his local board—to do work in the Southern District of New York, which order he refused to comply with, does the District Court for the Southern District of New York have no jurisdiction to prosecute and convict the petitioner?

II.

Does the letter of the State Director to the petitioner dated February 4, 1955, commanding him to report at the Hudson River State Hospital, Poughkeepsie, New York, constitute a valid order of the local board under Section 1660.20 (d) of the Regulations (32 C. F. R. § 1660.20 (d))?

[1] Numbers appearing herein within parentheses preceded by "R." refer to the appendix to appellant's brief in the Court of Appeals which was printed separately. It is filed as a part of the record (Vol. I) in this case.

STATUTES INVOLVED

The pertinent portions of the Universal Military Training and Service Act, 62 Stat. 604, as amended, 65 Stat. 75, provide:

Section 6 (j) of the Act (50 U. S. C. App. § 456 (j)):

"* * * Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, * * * if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. * * *"

Section 12 (a) of the Act (50 U. S. C. App. § 462 (a)):

"* * * Any * * * person * * * who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *."

SELECTIVE SERVICE REGULATIONS INVOLVED

The pertinent Regulations appear in 32 C. F. R., Parts 1606, 1622 and 1660. Since these Regulations are extensive they are printed as Appendix C, *infra*, pages 35 to 43. They are also quoted in the opinion of the trial court. (R. 14-20)

STATEMENT OF THE CASE

This criminal action was brought by indictment charging petitioner with a violation of the Universal Military Training and Service Act. (50 U. S. C. App. §§ 451-470) Petitioner was charged with failing and refusing to perform civilian work contrary to the Act. (R. 5) The petitioner pleaded not guilty. (R. 3)

The petitioner, before pleading to the indictment, brought on a notice of motion to dismiss the indictment for a want of jurisdiction and lack of venue because the offense was not committed in the Southern District of New York. (R. 25-31)

The Government in its affidavit in opposition conceded that the petitioner "never left the Northern District of New York." (R. 32) The court denied the motion to dismiss and held there was jurisdiction for the prosecution in the Southern District of New York. (R. 32)

The case proceeded to trial before the judge without a jury, which was waived. (R. 3) Testimony was received and documentary evidence admitted into the record. (R. 33-44) At the close of all the evidence, in the motion for judgment of acquittal, the petitioner contended that jurisdiction for the offense lay in the Northern District of New York and not in the Southern District of New York. (R. 45) This ground of the motion for judgment of acquittal was overruled. (R. 7-8)

In the motion for judgment of acquittal petitioner contended that the local board did not make an order of assignment for the performance of work at the Hudson River State Hospital and that the refusal of the petitioner to comply with the letter of the State Director, dated Febru-

ary 4, 1955, was not in conformity with Section 1660.20 (d) of the Selective Service Regulations and, therefore, the petitioner did not violate the Act or the Regulations in failing to comply therewith. (R. 45) This ground of the motion for judgment of acquittal was overruled for reasons stated extensively in the written opinion of the trial court. (R. 7-25)

The trial judge found petitioner guilty, entered a judgment of conviction and sentenced petitioner to eighteen months in the custody of the Attorney General of the United States and fined him One Thousand Dollars ($1,000.00). (R. 3-4, 6, 7-25) The court filed a written memorandum giving reasons for the judgment rendered. (R. 7-25)

The case was duly appealed to the court below. (R. 47) The case was duly briefed, argued and submitted, resulting in an affirmance of the conviction.

STATEMENT OF FACTS[2]

The petitioner was born on February 18, 1933. He is registered with Local Board No. 58, 1200 Chimes Building, Syracuse 2, New York. (F. 4, 5)[3] The local board mailed the classification questionnaire to him on December 4, 1951. (F. 4, 5) He answered the questions in the questionnaire and filed it with the local board on December 17, 1951. (F. 5) He gave his name, address, telephone number and social security number. (F. 6) He showed his education, as well as place and date of birth. (F. 10) He showed he was conscientiously opposed to participation in war in any form by signing Series XIV of the questionnaire. (F. 11) A special form for conscientious objector which was mailed to him by the local board on December 17, 1951, was filled out and filed on December 28, 1951. (F. 14) In this form the petitioner showed he was conscientiously opposed to his participa-

[2] The statement of facts appearing in the opinion of the trial court is correct and may be accepted by this Court for the purposes of decision in this case. (R. 7-13)

[3] Numbers appearing herein within parentheses preceded by "F." refer to penciled page numbers shown in the upper right-hand corner of the papers in the draft board file, which is Government's Exhibit 3, called the cover sheet.

tion in both combatant and noncombatant military service. (F. 14-17) Accompanying this form was a statement by the presiding minister of the Syracuse Northeast congregation of Jehovah's Witnesses, dated December 28, 1951, certifying that Allen Turner regularly attended meetings of the congregation and was in attendance at the Theocratic Ministry School. (F. 80)

On January 8, 1952, the local board placed the petitioner in Class I-O, which classification made him liable for the performance of civilian work in lieu of induction into the armed forces. (F. 12) This classification was continued on October 21, 1952. (F. 12) On January 27, 1953, he was directed to report for armed forces physical examination on February 3, 1953. (F. 12, 79) He was found to have a hernia (F. 74) but was accepted and so informed on February 20, 1953. (F. 12, 71) He was thereafter sent by the State Employment Office to the Good Shepherd Hospital but was not accepted because of the hernia. (F. 58; R. 35-36) He was thereafter operated on for the hernia on May 28, 1953. (F. 54; R. 36)

On August 31, 1953, the petitioner voluntarily entered the employment of Auburn City Memorial Hospital, at Auburn, New York. (F. 3, 38, 44; R. 37-40) The local board thereafter found out that he was thus employed and on September 18, 1953, issued to the petitioner an order reading as follows:

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SELECTIVE SERVICE SYSTEM
ORDER TO REPORT FOR CIVILIAN WORK
AND STATEMENT OF EMPLOYER

Local Board No. 58
1200 Chimes Bldg.
SEP 18 1953 [SEAL] Sept. 18, 1953
500 S. Salina St. (Date of mailing)
Syracuse 2, N.Y.
(Local Board Stamp)

To (First name) ALLEN (Middle name) D. (Last name) TURNER

(Selective Service Number) 30 58 33 49

Mailing address (Street and number) 219 Ashworth Place (City) SYRACUSE (Zone) (State) NEW YORK

Having been found to be acceptable for civilian work contributing to the maintenance of the national health, safety, or interest you have been assigned to Auburn City Memorial Hospital located at Auburn, N.Y.

You are ordered to report to *the Auburn City Memorial Hospital, Auburn, N. Y.*[4] at 8:00 A m. on the 28th day of Sept., 1953 where you will be given instructions to proceed to the place of employment.

You are ordered to report for employment pursuant to the instructions of the local board, to remain in employment for twenty-four (24) consecutive months or until such time as you are released or transferred by proper authority.

You will be instructed as to your duties at the place of employment.

Failure to report at the hour and on the day named in this order, or to proceed to the place of employment pursuant to instructions, or to remain in this employment the specified time will constitute a violation of the Universal Military Training and Service Act, as amended, which is punishable by fine or imprisonment or both.

[Signed]

(Clerk or Member of the Local Board)

[4] See the original order in the draft board file at page 22a of appendix for the United States in the court below (Vol. II of the record in this case). There it shows that the words "local board named above" were stricken out and the words above italicized were inserted instead thereof.

Statement of Employer

The registrant identified above reported for civilian work on the 31st day of August, 1953, to

Name of Employer AUBURN MEMORIAL HOSPITAL

Address of Employer (Street address) 5-19 Lansing Street

(City) Auburn (Zone) (State) New York

C. F. Harrienger
(Signature of employer or agent)

C. F. Harrienger,
Personnel Director
(Title)

SSS Form No. 153

On July 4, 1954, petitioner was discharged from this place of employment because his position was abolished and he could not adjust himself to another type of work at the hospital. (F. 38, 39; App. 37-40) Efforts were made by the State Director to relocate him. (F. 33-36)

On February 4, 1955, the State Director wrote to the petitioner as follows:

> Since your services at the Auburn Memorial Hospital were terminated before you had completed the required 24 months, you are hereby directed to report to Mr. Joyce at the Hudson River State Hospital, Poughkeepsie, New York, on Wednesday, February 16, 1955 at 8:30 A. M. for hospital work.

(R. 41) A carbon copy was sent to the local board and to the Hudson River State Hospital. (F. 29)

On February 7, 1955, the petitioner replied to the letter from the State Director, stating that he was not going to report to the Hudson River State Hospital at Poughkeepsie, New York. He wrote this letter from his address in Syracuse, New York, and addressed it to the Selective Service

System headquarters at 98 Fuller Road, Albany 5, New York. The letter appears in the file. (F. 19-20; R. 42-44)

On February 9, 1955, a letter was written to the Director of Selective Service at Washington, D. C., by the office of the State Director, as follows:

> On August 31, 1953 the above-named began his hospital work at Auburn City Hospital, Auburn, New York and on October 6, 1953 he was classified in Class I-W. The assignment was secured for the registrant by the New York State Employment Service.
>
> On July 4, 1954 the services of Mr. Turner were terminated by the hospital for the reason given in their letter dated July 9, 1954 addressed to the local board. Since this termination was not due to the misconduct of the registrant, steps were taken to secure similar employment for him. On November 29, 1954 a letter was written to the registrant from this headquarters advising him of approved agencies where the vacancies might possibly exist. Not hearing from him in responce to our letter, we wrote to him again on January 6, 1955. No reply was received however and on February 4, 1955 with the permission of the State of New York Department of Mental Hygiene, the registrant was ordered by letter to the Hudson River State Hospital, Poughkeepsie, New York to begin employment on February 16, 1955.
>
> Enclosed is a letter dated February 7, 1955 received from the registrant.
>
> We would appreciate receiving your advice as to what action should be taken now since it is apparent that Mr. Turner does not intend to report to the Hudson River State Hospital on February 16, 1955.
>
> Enclosed is the complete file of Mr. Turner. (F. 2)

On March 4, 1955, the Director of Selective Service wrote to the State Director at Albany, New York, as follows:

> Reference is made to your letter dated February 9, 1955, in which you requested advice as to action to be taken in the case of the above-named registrant who indicated that he did not intend to report to the Hudson River State Hospital on February 16, 1955.
>
> If this registrant actually did not report for employment, the statement required by Operations Bulletin No. 108 should be prepared and filed in the cover sheet. The cover sheet may then be referred to this Headquarters for consideration as to prosecution under section 1660.31 (a) of the regulations.
>
> The cover sheet is returned herewith. (F. 1, 18)

The petitioner did not leave Syracuse. He did not report to his local board at Syracuse and he did not report to the Hudson River State Hospital at Poughkeepsie, New York. (R. 13)

REASONS FOR GRANTING THE WRIT

I.

An important question of venue under the Constitution, the federal statutes on venue and the Rules of this Court on venue are here presented. While this Court indirectly touched upon this question in *Johnston* v. *United States*, 351 U. S. 215 (1956), the question here involved was not directly determined in that case. It is whether the complete refusal or failure of the local board and the Selective Service System to order the petitioner to report to the local board before proceeding out of the district failed to give venue to the trial court in this case, where the petitioner did not leave the district when ordered to do so—not by the local board but by the State Director of Selective Service. This is an important question under the Constitution which has not been but which should be determined by this Court.

Article III, Section 2, of the United States Constitution provides in part as follows:

> "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; * * *"

The Sixth Amendment to the United States Constitution reads in part as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, * * *"

The court below says that *Johnston* v. *United States*, 351 U. S. 215 (1956), is in point. That is not so, because the local board order itself in that case commanded the registrant to proceed out of the district to do work in another district. The order in that case given to the registrant was not by an interloper or by one having no statutory authority as here. The statute gave the local board in that case the sole authority to order the registrant to do work out of the Western District of Pennsylvania. It alone had authority to order him to proceed to the Eastern District of Pennsylvania. The failure to take the second step called for in the order in that case occurred outside the district in that case.

In this case the facts are entirely different. The hospital to which the local board ordered petitioner to proceed was located in the Northern District of New York at Auburn. The place to which the local board ordered petitioner was not in the Southern District. The local board in this case at no time selected work or ordered petitioner to go do civilian work out of the Northern District.

It should be noticed that Section 6 (j) of the Act limits the offense to the refusal to comply with an order of a local board. The statute does not make the refusal to comply with an order of any other person or agency an offense.

In the absence of a specific statutory command from the local board for Turner to proceed out of the Northern District to the Southern District there can be no venue or jurisdiction of the offense alleged to have occurred in the Southern District of New York. The violation of the order made by the State Director to do work out of the Northern District of New York was not an offense within the meaning of Section 6 (j) of the Act so as to place venue in the Southern District of New York.

The decision in *Johnston* v. *United States*, 351 U. S. 215 (1956), misses this case by a mile. It is not in point because the local board in this case did not order Turner to do work outside the Northern District of New York or in the Southern District of New York.

The reason that *Johnston* v. *United States*, 351 U. S. 215 (1956), was decided so as to give venue outside the district where the local board was located was because the registrants reported at the local board in obedience to the first order appearing in the printed form. They then refused at the local board to take the second step or proceed to the place of employment out of the local district. In *Johnston* v. *United States* the Court said that the place of venue "is determined by the acts of accused that violated the statute." —*Johnston* v. *United States*, 351 U. S. at pages 220-221.

That decision also pointed out that the formal order commands two duties. "The first is to report to the local board. This was done by each registrant. The second is to report for employment and remain there for 24 consecutive months." (*Johnston* v. *United States*, 351 U. S. at page 222) The *Johnston* case, therefore, involved a crime arising from "failure to complete the second duty—report for employment. Accordingly venue must lie where the failure occurred."—351 U. S. at page 222.

In this case the contrary results. The printed order of the local board, which could not be altered, commanded Turner to report at the local board for the purpose of being given instructions to proceed to the hospital. Since

the typewritten alteration is a nullity, the offense in this case was the failure of Turner to report at the local board to proceed to the place of employment out of the district, as he was commanded by the State Director. This was the failure to take the first step.

Inasmuch as the parties have stipulated that it is the refusal to comply with the local board order that constitutes an offense, and, inasmuch as the petitioner failed to report to the local board to receive instructions to proceed to the Hudson River State Hospital at Poughkeepsie, the offense in this case is entirely different from the offense described in *Johnston* v. *United States*, 351 U. S. 215 (1956).

There the offense was the failure to take the second step commanded in the order. Here the offense was the failure to take the first step in the order, namely, refusal to report at the local board "where you will be given instructions to proceed to the place of employment." See the photostatic copy of the draft board order, appearing at page 22a of the appendix for the United States in the court below, Vol. II of the record. It is manifest that the case of *Johnston* v. *United States*, 351 U. S. 215 (1956), does not support the Government but, to the contrary, it supports the petitioner in this case, because, as stated by the Court, "the first duty is to report to the local board." —351 U. S. 215 at page 223.

The situation here is identical to a situation where the local board orders a registrant, contrary to the Selective Service forms, to appear directly at some distant place of induction rather than commanding him (as required by the forms) to report at the local board and then proceed to the place of induction. In such a situation it must be conceded that a failure to proceed to the place of induction would not be the offense. The offense could only be failure to take the first step required by the law, which is to report to the local board. The offense in such case could not be the failure to take the second step, the beginning

of which, or the order to take which, was never legally reached by the registrant as required by law.

All three of the registrants involved in *Johnston* v. *United States*, 351 U. S. 215 (1956), reported to the local board and there refused to take the second step. Had they not reported to the local board the decision would have been different. There is no jurisdiction in the place where the work was to be performed in this case because the petitioner failed to report to the local board. This is the interpretation of the *Johnston* decision by the Department of Justice and the Selective Service System. This was the position taken by the Solicitor General before the Court in his brief in No. 643, October Term, 1955, at pages 32-35 and 51. This interpretation of the Act and Regulations by the Government seems to have been accepted by the Court in *Johnston* v. *United States*, 351 U. S. 215 (1956).

It is true that petitioner was not ordered to appear at the local board. But he was commanded—not by the local board but by the State Director—to proceed directly to the place of work. This was not a legal order sufficient to give jurisdiction because it was made by the State Director and not by the local board. Had the order been issued by the local board it would have used the regular form (SSS Form No. 153), thereby commanding the petitioner "to report to the local board." The form of the order must be followed in every case and cannot be altered by the local board or by the State Director.—32 C. F. R. §§ 1606.51 and 1606.52, *infra*, page 36.

It was beyond the authority of the local board or the State Director, acting for the local board, to order the petitioner to report directly to the hospital. The forms, which are made a part of the law, required that he be ordered to report first at the local board.

The attention of the Court is directed to the second paragraph of the local board order. In the first line it will notice that an attempt was made by the local board to strike out the statutory words appearing in the printed form: "local

board named above" and in lieu thereof there are typed in the following words: Auburn City Memorial Hospital, Auburn, N.Y. (See page 22a of the appendix for the United States in the court below, Vol. II of the record.) This action of the local board in thus altering the statutory form so as to eliminate the first step of reporting to the local board first before going to the hospital constituted a violation of 32 C. F. R. §§ 1606.51 and 1606.52 This was an illegal effort to cut out of the Selective Service procedure the first step prescribed by the Regulations for conscientious objectors in the process of selection and assignment. The first step is to report first to the local board "where you will be given instructions to proceed to the place of employment."

Note also the last paragraph of the order, where it is stated: "Failure to report at the hour and on the day named in the order" to the local board is said to be an offense. It is significant that this offense is entirely different from the failure to comply with the second step, or proceeding to the hospital, which is also quoted in that same paragraph of the order of the local board.

Illegally striking out the first step prescribed in the order form (which is a part of the Regulations) by the local board, the court below says, vested authority to order the registrant to proceed directly to the place of employment and bypass the first step to the local board. The alteration of the order, being illegal, is of no effect. The first step commanded in the order was that the petitioner report to the local board. The petitioner failed to report to the local board. The offense committed, therefore, in this case is a failure to report to the local board first before proceeding to the place of employment.

Since the forms cannot be changed, it is impossible under the Act and the Regulations to ignore the first step of reporting to the local board commanded by law that was violated by the registrant in this case. Failure to report to the local board is not an offense committed in the Southern District of New York; it is an offense that

was committed only in the Northern District of New York.

The violation of the Regulations by ordering petitioner to report directly to the hospital and not first to the local board does not confer jurisdiction upon the court below.

The jurisdiction of the offense is restricted by the Act and the Regulations. It cannot be expanded or changed by illegal acts of the State Director in ordering steps contrary to the forms which are made a part of the law.

It is submitted, because petitioner did not report to the local board and there refuse or fail to proceed, that no refusal or failure to act occurred in the Southern District of New York. There is, accordingly, no jurisdiction or venue of the offense in the District Court in this case.

II.

Related to the question above described, the first question presented, is the second question above stated. It involves a proper interpretation of the Act and the Selective Service Regulations, which prohibit the State Director of Selective Service from making the assignment for work and issuing an order for work to the petitioner to do civilian work under the Act. The Act and the Regulations relegate this right to the local board. This second question, therefore, involves an important question as to the administration of the Act and the Regulations providing for civilian work to be done by conscientious objectors. The question is of wide public importance and one that has not been heretofore determined by this Court but which ought to be decided in the national interest.

The Act and the Regulations do not make it an offense to refuse to obey an order of the State Director. There are no provisions, in fact, for an offense to be based upon refusal to obey an order of the State Director. The Act mentions only the orders of the local board. The Regulations specifically mention the orders of the local board. Neither makes mention of any order of the State Director or by any other person. Section 6 (j) of the Act (50 U. S. C. App.

§ 456 (j), 62 Stat. 604, as amended, 65 Stat. 75) provides that one who has been classified as a conscientious objector shall "be ordered by his local board . . . to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate." It should be observed that the Act prescribes for the order to be made by the local board and that the work shall be selected by the local board.

The position taken by the court below is contrary to the statute. Section 6 (j) of the Act (50 U. S. C. App. § 456 (j)) prescribes that the order to perform the civilian work not only be given by the local board but also that the type of work to be performed must first be selected by the local board or must be the type of work that the "local board may deem appropriate." The Act, therefore, by explicitly naming the local board as the agency to select the type of work as a corollary, excludes the State Director from 'deeming appropriate' the type of work to be performed by the registrant. A reasonable interpretation of the statute rejects completely the misinterpretation of the Regulations by the court below, which Regulations prescribe that the new and additional work must be designated by the local board.

Section 1660.30 of the Selective Service Regulations (32 C. F. R. § 1660.30) should be read. See this petition, *infra*, at page 41.

Section 1660.20 (a) of the Regulations provides for the issuance of the only order that was ever actually given by the local board in this case dated September 18, 1953. This order commanded the petitioner to appear at the Auburn City Memorial Hospital in Auburn, New York. This order was issued pursuant to Section 1660.20 (a) of the Regulations. See this petition, *infra*, at page 38.

The Act does not support the holdings of the courts below that an order can be made by an interloper or someone not authorized by the Act or the Regulations. It is noticed

that 32 C. F. R. § 1660.21 (c) says that the registrant "shall . . . be ordered by his local board." The petitioner in this case was not ordered by his local board to perform the civilian work at the state hospital located at Poughkeepsie. It is said by the court below that the Regulations do not specify or specifically state that the local board should order the registrant to his new assignment. But it is equally true that the Regulation itself does not state that the State Director is authorized to issue the order for the new work. The Regulation says that the registrant should by the local board be ordered "to perform the same type of work with another employer."

The heading of the Regulation throws some light on the problem. The heading indicates that orders may be made only by the local board. The heading of the regulation reads as follows: "*General provisions relating to orders by the local board to perform civilian work and performance of civilian work.*" The very fact that the heading mentions that the local board shall order a registrant to perform civilian work indicates that the President had in mind that the local board should issue the order and not the State Director. Had the President intended the State Director to issue the order to perform "the same type of work with another employer," as used in the Regulation, it could have been very easily stated. Failure of the President to mention that the State Director could order the performance of "the same type of work with another employer" proves that the President had in mind that the order be issued by the local board.

In the first clause of Section 1660.21 (c) the initial order is prescribed to be made "by the local board." The use later in that section of the Regulations of the term "shall be ordered" merely implies that the order must be made by the local board and not by any other.

It may be argued that the State Director is the "proper authority" mentioned in Section 1660.21 (c), which specifies in the last sentence that a registrant, after being ordered

to do civilian work, cannot leave such work "unless transferred by proper authority." If the President had had the State Director in mind, the State Director, instead of the local board, would have been named in the Regulations. It would have been easy to add the words: "State Director." The broad and general term "proper authority" in the sentence about *release* from work is restricted by more specific provisions of Section 1660.21 (c), which say early in the section about *transfer* from job to job that the registrant "shall . . . be ordered by his local board." It is submitted that such would be an erroneous interpretation of Section 1660.21 (c) and Section 1604.12 of the Regulations.

Section 1660.21 (c) about transfer of work from one place to another relates to orders by the local board. Note that the opening words of the Regulation say: "General provisions relating to orders *by the local board* to perform civilian work and *performance of civilian work.*" (Emphasis added.) The words "should be ordered" and "comply with this order" used in 32 C. F. R. § 1660.21 (c) relate to action taken by the local board. They do not pertain to action of the State Director which would usurp the authority vested in the local board. Had the President intended to give the State Director such authority in this Regulation, the State Director would have been mentioned along with the local board in the Regulation.

This could not be left to implication by importation from outside the Act and Regulations, as it must be under the construction placed upon the Regulation by the Government. The Regulation is not ambiguous. It relates to the local board. The illegal administrative interpretation of the Selective Service System and the National Director, whereby the State Director has usurped the authority of the local board under this Regulation, putting it in conflict with the statute and the Regulations must be rejected.

It is stated by the court below that the Regulations do not require the local board to reassign the conscientious objector to another position if the first work assignment

is terminated. This statement, as has been shown above, is contradicted by the explicit provisions of 32 C. F. R. § 1660.-21 (c). This position taken by the petitioner, that the local board must reassign the registrant, is not only supported by the Regulations. The contention is also backed up by the statute.

Section 10 of the Act (50 U. S. C. App. § 460 (b) (3)) explicitly provides that the "civilian local boards" are granted authority to carry out functions of the President under the Act "with respect to the registration, examination, classification, selection, *assignment* . . . together with such other duties as may be assigned under this title." (Emphasis added.) Title 50 of the Act in Section 6 (j) specifically states that, in respect to the civilian work to be performed by conscientious objectors, the work must be that type "as the local board may deem appropriate."

Since the local board must determine the appropriateness of the civilian work to be performed by conscientious objectors, then of necessity it follows that the word "assignment" used in Section 10 of the Act (50 U. S. C. App. § 460 (b) (3)) refers to assignment by the local board for civilian work by each conscientious objector. It follows, therefore, that the statute specifically limits the authority to make assignment of civilian work to be performed by conscientious objectors at any time to the local board and it only. The statute limits the assignment and the right to deem appropriate the type of work to be performed to the local board. This function cannot be usurped, therefore, by the State Director through an administrative interpretation of Section 1660.21 (c) of the Regulations, relied upon by the Government in this case.

The Act confines all orders to registrants to the local board. The very fact that Congress failed to authorize any other person or agency to issue the orders necessarily shows that Congress intended that no other person or agency could issue an order to a registrant.

It was argued in the court below, because the Regulations authorized the Director of Selective Service to prescribe regulations "for the administration of" the machinery of the Selective Service System and to issue "instructions as shall be necessary for the carrying out of the functions of the Selective Service Regulations" these Regulations constitute specific authority to overrule the Congress and to usurp the authority of the local board prescribed by Section 1660.21 (c) of the Selective Service Regulations.

The authority granted to the Director to run the Selective Service System does not mean at all that he has unlimited authority to usurp the statutory authority of the local boards and the duties delegated to the local boards by the President in the Selective Service Regulations.

It is noticed that Section 1604.1 of the Regulations comes under the heading of the national administration. It speaks only of the National Director of Selective Service. There is no reference whatever in that part of the Regulations to the authority of the State Director to make orders.

Section 1604.12 relates to powers of the State Director. The only authority granted to the State Director is that stated, which is that he "shall have responsibility for carrying out the functions of the Selective Service System in his State." (32 C. F. R. § 1604.12) The general terms of this section contain nothing that indicates an intention by the President to allow the State Director to usurp the functions of the local board prescribed in Section 1660.21 (c) of the Regulations. To contend that the general regulation overrules the specific would bring it into conflict with the express provisions of the statute.

The trial court held that Section 1660.31 of the Regulations (32 C. F. R. § 1660.31) supports its judgment. (R. 24) Emphasis is placed upon "the responsibility" of the State Director "to see that the registrant performs the work to which he has been ordered by the local board." But this gives no support to the opinion. The supposed "support" falls when emphasis is placed upon the words of the

section, "ordered by the local board." The Regulation does not say "ordered by the State Director." The State Director is merely constructively to stand watch over the registrant and see to it that he does the work. The Regulation does not purport to give the State Director the authority to order the registrant to do work or make an order for the local board, which by Section 1660.21 (c) is limited to the local board.

It is held by the trial court—and this is erroneous—that, upon reporting to the hospital, the registrant passes out from the jurisdiction of the local board and comes within the control of the State Director. (R. 21-23) The Regulation does not so state. The only authority that the State Director is given is to see to it that the registrant performs the work assigned by the local board and not by the State Director. The State Director is merely the agent of the local board to enforce the order of the local board. The fact that the State Director is given authority to *police the registrant* and see to it that he complies with the order does not give the State Director the authority to usurp the exclusive jurisdiction of the local board to reassign the registrant, according to Section 1660.21 (c). The fact, therefore, that the State Director acts as a policeman for the local board does not oust the local board of its authority. The Act and the Regulations prescribe that the registrant shall be liable to perform only such work as "the local board may deem appropriate." (50 U. S. C. App. § 456 (j), 62 Stat. 604) Since the Act and the Regulations state that the local board is the one to determine the appropriateness of the work there is no authority for the holding that the State Director can oust the jurisdiction of the local board.

The trial court took the position that the "manual for the guidance of State Directors of Selective Service entitled 'The Conscientious Objector Work Program Manual,' issued by General Hershey, Director of Selective Service, is supreme over and above the Selective Service Regulations. (R. 21-23)

It is true that the Director of Selective Service has authorized the State Directors Advice (an administrative interpretation to "transfer a registrant to another job" but this authorization by the Director of Selective Service is unauthorized by the regulations. The provisions of the manual defy the orders of the President of the United States expressed in the Regulations. The administrative misinterpretation of the Regulations in conflict with the regulations cannot be followed by the Court.

It is true that in cases of ambiguity in the law or the regulations a long and well-established administrative interpretation may be relied upon to fill in a gap and replace a hiatus. But there is no gap in the Regulations involved here. No ambiguity is present. Since the Act is plain and the Regulations are specific, that the order must be by the local board, it is not permissible for the court to rely upon an erroneous misinterpretation of a regulation or law by an administrator, regardless of how old it may be. Surely the misinterpretation and misunderstanding of General Hershey of the commands of the President of the United States, when there is no ambiguity in the Regulations promulgated by the President and when the misinterpretation of General Hershey conflicts with the words of the President, cannot be said to be supreme and entitled to "persuasive weight."

It must be conceded that the State Director has no authority to order a registrant to enter the armed forces. If a registrant has been ordered by the local board to submit to induction into the armed forces it is the local board —and the local board only—that can extend the time for reporting for induction. Since it must be conceded that the State Director has no authority to order a registrant to do military service it must be agreed that he has no authority to command a registrant to change from one place of employment to another place, which authority is relegated to the local board. Why the difference because petitioner is a conscientious objector?

The trial court held that the situation here is the same as though the registrant were ordered to transfer from one camp to another after he has submitted to induction. (R. 21, 23) But this analogy is not true. When and only when a registrant becomes a soldier in the armed forces he takes on a different status. He is not liable to military orders until he submits to induction. (*Billings* v. *Truesdell*, 321 U. S. 558, 559 (1944)) The conscientious objector is not liable for compliance with any orders until he gets them from the local board. The conscientious objector is not a member of the armed forces and the State Director cannot, as a member of the armed forces, order the registrant to change his "station." This is especially true when it is considered that only the local board—and not the State Director—is authorized by the Regulations to make an order or any assignment for civilian work for a conscientious objector.

The order of the State Director is that of an interloper, as far as the Act and the Regulations are concerned. An order by the Governor of New York State would not have been an order of the local board. An order by a congressman or by the United States Attorney for the Northern District of New York would not have been an order of the local board. By force of the same reason the order of the State Director is not an order of the local board. Since there is no local board order commanding Turner to do work at the state hospital at Poughkeepsie there has been no violation of the law. It is the same as was stated by Mr. Justice Douglas in *Estep* v. *United States*, 327 U. S. 114, 120 (1946): "It is only orders 'within their respective jurisdictions' that are final. It would seem, therefore, that if a Pennsylvania board ordered a citizen and resident of Oregon to report for induction, the defense that it acted beyond its jurisdiction could be interposed in a prosecution under § 11."

It is manifest that the order issued by the State Director was equivalent to no order at all. It was the same as though

nobody had ordered the petitioner to report at the state hospital and do work. The order issued here by the State Director had no more force and effect than an order issued by a stranger or an alien, even, as far as the facts in this case are concerned. There being no valid order issued by the local board, it means, of necessity, that the Court must conclude that the failure to comply with the order in question was not a violation of the Act and Regulations as charged in the indictment.

This case is a simple one. It is purely a matter of agency jurisprudence. Assume that an agent for a corporation violated express commands of the corporation and did something not within the actual scope of his employment. Would it be an act that would bind his principal? No. So also it is here. The State Director acted beyond the scope of his authority when (1) he deemed the statutory appropriateness of the work which belonged to the local board, and (2) he made the assignment to do new work, which could be done only by the local board.

CONCLUSION

The petition for writ of certiorari should be granted for the reason that important questions of federal law of wide national interest are here presented which have not heretofore been decided by this Court but which ought to be determined by it.

Respectfully submitted,

HAYDEN C. COVINGTON

Counsel for Petitioner

June, 1957.

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 276—October Term, 1956.

(Argued April 11, 1957 Decided May 7, 1957.)

Docket No. 24389

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—against—

ALLEN D. TURNER,

Defendant-Appellant.

Before:

HAND, MEDINA and WATERMAN,

Circuit Judges.

Appeal from a judgment of the United States District Court for the Southern District of New York, Gregory F. Noonan, *Judge.*

Defendant appeals from a judgment of conviction for failing and refusing to obey an order of his local board to report for civilian work contributing to the maintenance of the national health, safety and interest in lieu of induction into the armed forces, in violation of the Universal

Military Training and Service Act, 50 U. S. C. App., Section 462. Affirmed.

PAUL W. WILLIAMS, United States Attorney for the Southern District of New York, New York City (John T. Moran, Jr. and Robert Kirtland, Assistant United States Attorneys, New York City, of Counsel), *for plaintiff-appellee.*

HAYDEN C. COVINGTON, Brooklyn, New York, *for defendant-appellant.*

MEDINA, *Circuit Judge:*

Allen D. Turner is one of the group known as "Jehovah's Witnesses." Having served for ten months at the Auburn Memorial Hospital, in Auburn, New York, after his classification as a conscientious objector, which service was terminated, he was later directed to serve the balance of his term of service of twenty-four months at Hudson River State Hospital, in Poughkeepsie, New York. It is not disputed that he wilfully and knowingly failed and refused to comply with this direction; and for this refusal he has been convicted of a violation of the Universal Military Training and Service Act, 50 U. S. C. App. Section 462, and sentenced to eighteen months imprisonment and the payment of a fine of $1,000. The principal issue raised on this appeal is the legality of the direction that he report at Poughkeepsie. The substance of his claim is that this direction was not made by his local board but was contained in a letter from the New York State Director of Selective Service.

As appellant's claim is a technical one, we think a full statement of the factual background will make it easier

to understand the interrelation of the various applicable statutes and regulations.

Appellant, a resident of Syracuse, New York, was born on February 18, 1933; he is a registrant with local board No. 58 in Syracuse; and in due course received and filled out SSS Form 150, which led to his classification I-O, as a conscientious objector, on January 8, 1952. He reported for physical examination on February 3, 1953, and was found acceptable although suffering from a hernia.

On February 20, 1953, the local board mailed to appellant SSS Form 152, entitled "Special Report for Class I-O Registrants," which required appellant to submit three types of work that he was qualified to perform. He failed to do this but merely wrote in answer to the questions relative to the three types of work: "To serve Almighty God with all my heart and soul." He was directed by the local board, however, to report to the New York State Employment Office for the purpose of determining his qualifications for civilian work, and the upshot of his interview was that employment in the Hospital of the Good Shepherd in Syracuse was offered and he accepted; but the actual assignment was deferred pending an operation to cure the hernia. After the operation the surgeon reported that appellant was physically fit to commence work on July 14, 1953.

The New York State Employment Service advised the local board on August 21, 1953, that it expected to place appellant in Auburn Memorial Hospital within a week; and in fact he reported for work and commenced his employment at Auburn Memorial Hospital, 5-19 Lansing Street, Auburn, New York, on August 31, 1953. Accordingly, on September 18, 1953, appellant's local board issued to him the following order, on SSS Form 153, which is the basic order, and appellant's conviction is the result of his wilful failure to comply with the terms thereof:

Selective Service System

ORDER TO REPORT FOR CIVILIAN WORK AND STATEMENT OF EMPLOYER

[Selective Service]

[System Seal]

Sept. 18, 1953

Allen D. Turner, 30 58 33 49
219 Ashworth Place
Syracuse, New York

Having been found to be acceptable for civilian work contributing to the maintenance of the national health, safety, or interest you have been assigned to Auburn City Memorial Hospital located at Auburn, N. Y.

You are ordered to report to the Auburn City Memorial Hospital, Auburn, N. Y. at 8:00 a.m. on the 28th day of Sept., 1953, where you will be given instructions to proceed to the place of employment.

You are ordered to report for employment pursuant to the instructions of the local board, to remain in employment for twenty-four (24) consecutive months or until such time as you are released or transferred by proper authority.

You will be instructed as to your duties at the place of employment.

Failure to report at the hour and on the day named in this order, or to proceed to the place of employment pursuant to instructions, or to remain in this employment the specified time will constitute a violation of the Universal Military Training and Service Act, as amended, which is punishable by fine or imprisonment or both.

[Signed]
(Clerk or Member of the Local Board)

The registrant identified above reported for civilian work on the 31st day of August, 1953, to

Auburn Memorial Hospital
5-19 Lansing Street
Auburn, New York

[Signed]
C. F. Harrienger,
Personnel Director

On October 6, 1953, his local board classified appellant I-W, to signify that he was a conscientious objector performing civilian work.

On July 9, 1954, Auburn Memorial Hospital informed the local board that appellant's employment with the hospital had terminated on July 4, 1954, under circumstances casting no reflection upon appellant's character. He had served ten months of the required period of twenty-four.

The New York State Director for Selective Service, when notified of the termination of the original work assignment, advised appellant of various employment opportunities elsewhere as well as of appellant's obligation to seek such, and that he would be subject to assignment by the State Director if he failed to find employment himself. But appellant disregarded these various communications.

Accordingly, in a letter dated February 4, 1955, which appellant received in Syracuse, the State Director wrote:

> Since your services at the Auburn Memorial Hospital were terminated before you had completed the required 24 months, you are hereby directed to report to Mr. Joyce at the Hudson River State Hospital, Poughkeepsie, New York, on Wednesday, February 16, 1955 at 8:30 A.M. for hospital work.

The objection to venue in the Southern District of New York is wholly without merit, unless it be assumed that appellant's failure to report at the Hudson River State Hospital in Poughkeepsie, which is within the territorial limits of the Southern District of New York, was not a failure and refusal to obey a lawful order of his local board. The point was settled by the decision in *Johnston* v. *United States*, 351 U. S. 215, that "where the crime charged is the failure to do a legally required act, the place fixed for its performance fixes the situs of the crime."

Nor do certain criticisms of the form of the local board's "Order to Report for Civilian Work," dated September 18, 1953, warrant extended comment. The printed words "local board named above" were x-ed out, and over them was typewritten in, "Auburn City Memorial Hospital, Auburn, N. Y.," where appellant was ordered to report on September 28, 1953. We are told that 32 C. F. R. §§ 1606.51 and 1606.52 require the use of official forms, which must not be altered; that the regular procedure required that appellant be ordered to report to the local board, there to receive "instructions to proceed to the place of employment"; and that the insertion of the name and address of the hospital and the deletion of the words "local board named above" nullified the order. Indeed, the point is developed with considerable proliferation. It is asserted that everything depends upon the "first step," which is said to be reporting at the local board; and it is further claimed that a similar reporting at the board was an essential preliminary and jurisdictional prerequisite to the giving of any direction to report at the Poughkeepsie hospital.

We think these refinements wholly at variance with the scheme of the statute and the regulations. No essential or jurisdictional "step" was omitted; appellant had already voluntarily reported at the hospital in Auburn and was at work there before the order of September 18, 1953, was made.

This brings us to the crux of the case. The order of September 18, 1953, commanded appellant "to remain in employment for twenty-four (24) consecutive months or until such time as you are released or transferred by proper authority"; and the last paragraph of the order informed appellant that his failure "to remain in this employment the specified time will constitute a violation of the Universal Military Training and Service Act, as amended, which is punishable by fine or imprisonment or both." Was appellant's failure to obey the direction of the State Director to report at the hospital in Poughkeepsie a wilful refusal to comply with the order of the local board of September 18, 1953?

A careful examination of the underlying statute and the regulations promulgated pursuant to the authority conferred thereby has convinced us that it is the function of the local board to determine the type of civilian work to be performed by a registrant who has been classified I-O and to order the registrant to perform that work in lieu of induction into the armed forces; thereafter it is the function of the State Director to implement the order of the local board by seeing to it that the registrant performs for the requisite period the work he has been ordered by the local board to do. The legal effect of appellant's failure to obey the direction of the State Director to report to the hospital at Poughkeepsie was a refusal to comply with the order of the local board which determined the type of civilian work to be done and ordered appellant to do it.

The Congress has authorized the President "to prescribe the necessary rules and regulations to carry out the provisions" of the Act [50 U. S. C. App. Section 460(b)(1)], and to appoint a Director of Selective Service [50 U. S. C. App. Section 460(a)(3)] and a State Director for Selective Service in each state of the Union [50 U. S. C. App. Section 460(b)(2)]. Pursuant to such authority the regulations were prescribed and the Director was given power to "issue such public notices, orders, and instructions as shall be

necessary for carrying out the functions of the Selective Service System." 32 C. F. R. §1604.1(b). Each State Director has similar authority, subject to the direction of the Director. 32 C. F. R. §1604.12. Elaborate provisions were made to assure that conscientious objectors be given fair treatment, and at the same time carry a proper share of the burdens of citizenship.

True it is that the heading of 32 C. F. R. § 1660.21 reads, "General provisions relative to orders by the local boards to perform civilian work and performance of civilian work," but this taken together with the text of the Regulations makes it clear that the language is carefully chosen. The only reference to the local board is to the local board's order to report for civilian work. Section 1660.21 merely provides that "the registrant shall be ordered to perform the same type of work with another employer"; and the phraseology of SSS Form 153 refers to a transfer "by proper authority." That the direction to transfer as well as the general supervision of compliance by the registrant with the initial order of the local board are functions of the State Director, as held by Judge Noonan, is clear to us from the unambiguous and pertinent provision of Section 1660.31 of the Regulations:

> It shall be the responsibility of such State Director of Selective Service to see that the registrant performs the work to which he has been ordered by the local board for a period of twenty-four consecutive months, unless sooner released under the provisions of Section 1660.21.

We hold that the State Director by making a reassignment such as the one before us here is not usurping a function reserved to the local board; he is exercising the authority prescribed by Section 1604.12, carrying out the duty imposed upon him by Section 1660.31, and implement-

ing the original order of the local board assigning the registrant to civilian work.

Affirmed.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 7th day of May one thousand nine hundred and fifty-seven.

Present: HON. LEARNED HAND,
HON. HAROLD R. MEDINA,
HON. STERRY R. WATERMAN, Circuit Judges

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ALLEN D. TURNER,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO
Clerk

APPENDIX C

Section 1606.51 of the Regulations

Section 1606.51 of the Selective Service Regulations (32 C. F. R. § 1606.51) (E. O. 9979, 13 F. R. 4188, July 22, 1948) provides:

SELECTIVE SERVICE FORMS

"1606.51 *Forms made part of regulations.* (a) All forms and revisions thereof referred to in these or any new or additional regulations, or in any amendment to these or such new or additional regulations, and all forms and revisions thereof prescribed by the Director of Selective Service shall be and become a part of these regulations in the same manner as if each form, each provision therein, and each revision thereof were set forth herein in full. Whenever in any form or in the instructions printed thereon, any person shall be instructed or required to perform any act in connection therewith, such person is hereby charged with the duty of promptly and completely complying with such instruction or requirement.

"(b) The Director of Selective Service, as to such persons or agencies as he designates, may waive any requirement that any form be notarized or sworn to."

Section 1606.52 of the Regulations

Section 1606.52 of the Selective Service Regulations (32 C. F. R. § 1606.52) (13 F. 4. 4420, July 31, 1948; redesignated at 14 F. R. 5021, Aug. 13, 1949) provides:

"1606.52 *Special forms must be authorized.* Whenever conditions within a State make necessary a form not prescribed by the Director of Selective Service or mentioned in the regulations in this chapter or the directives issued thereunder, the State Director of Selective Service shall, prior to adopting the proposed form, submit three copies thereof, together with a brief statement of the necessity

and proposed use, to the Director of Selective Service. The form shall not be used until approved by the Director of Selective Service.

Section 1622.14 (a) of the Regulations

Section 1622.14 (a) of the Selective Service Regulations (32 C. F. R. § 1622.14(a)) (as amended by E. O. 10420, 17 F. R. 11593, Dec. 19, 1952) provides:

"1622.14 *Class I-O: Conscientious objector available for civilian work contributing to the maintenance of the national health, safety or interest.* (a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and non-combatant training and service in the armed forces."

Section 1622.16 (a) of the Regulations

Section 1622.16 (a) of the Selective Service Regulations (32 C. F. R. § 1622.16 (a)) (E. O. 10292, 16 F. R. 9862, Sept. 28, 1951) provides:

"1622.16 *Class I-W: Conscientious objector performing civilian work contributing to the maintenance of the national health, safety, or interest.* (a) In Class I-W shall be placed any registrant who has entered upon and is performing civilian work contributing to the maintenance of the national health, safety, or interest, in accordance with the order of the local board."

Section 1660.1 of the Regulations

Section 1660.1 of the Selective Service Regulations (32 C. F. R. § 1660.1) (E. O. 10328, 17 F. R. 1650, Feb. 22, 1952) provides:

"*Definition of appropriate civilian work.* (a) The types of employment which may be considered under the provisions of section 6 (j) of title I of the Universal Military Training and Service Act, as amended, to be civilian work contributing to the maintenance of the national health, safety, or interest, and appropriate to be performed in lieu of induction into the armed forces by registrants who have been classified in Class I-O shall be limited to the following:

"(1) Employment by the United States Government, or by a State, Territory, or possession of the United States or by a political subdivision thereof, or by the District of Columbia.

"(2) Employment by a nonprofit organization, association, or corporation which is primarily engaged either in a charitable activity conducted for the benefit of the general public or in carrying out a program for the improvement of the public health or welfare, including educational and scientific activities in support thereof, when such activity or program is not principally for the benefit of the members of such organization, association, or corporation, or for increasing the membership thereof.

"(b) Except as provided in subparagraph (2) of paragraph (a) of this section, work in private employment shall not be considered to be appropriate civilian work to be performed in lieu of induction into the armed forces by registrants who have been classified in Class I-O."

Section 1660.20 of the Regulations

Section 1660.20 of the Selective Service Regulations (32 C. F. R. § 1660.20) (E. O. 10328, 17 F. R. 1650, Feb. 22, 1952) provides:

"*Determination of type of civilian work to be performed and order by the local board to perform such work* (a) When a registrant in Class I-O is found acceptable for service after his armed forces physical examination or when such a registrant has failed to report for or to submit

to armed forces physical examination, he shall, within ten days after notice of acceptability is mailed to him by the local board or within ten days after he has failed to report for or submit to armed forces physical examination, submit to the local board three types of civilian work contributing to the maintenance of the national health, safety, or interest as defined in section 1660.1, which he is qualified to do and which he offers to perform in lieu of induction into the armed forces. If the local board deems any one of these types of work to be appropriate, it will order the registrant to perform such work, but such order shall not be issued prior to the time that the registrant would have been ordered to report for induction if he had not been classified in Class I-O, unless he has volunteered for such work.

"(b) If the registrant fails to submit to the local board types of work which he offers to perform, or if the local board finds that none of the types of work submittd by the registrant is appropriate, the local board shall submit to the registrant by letter three types of civilian work contributing to the maintenance of the national health, safety, or interest as defined in section 1660.1 which it deems appropriate for the registrant to perform in lieu of induction. The registrant, within ten days after such letter is mailed to him by the local board, shall file with the board a statement that he either offers to perform one of the types of work submitted by the board, or that he does not offer to perform any of such types of work. If the registrant offers to perform any one of the three types of work, he shall be ordered by the local board to perform such work in lieu of induction, but such order shall not be issued prior to the time that the registrant would have been ordered to report for induction if he had not been classified in Class I-O, unless he has volunteered for such work.

"(c) If the local board and the registrant are unable to agree upon a type of civilian work which should be performed by the registrant in lieu of induction, the State

Director of Selective Service for the State in which the local board is located, or the representative of such State Director, appointed by him for the purpose, shall meet with the local board and the registrant and offer his assistance in reaching an agreement. The local board shall mail to the registrant a notice of the time and place of this meeting at least 10 days before the date of the meeting. If agreement is reached at this meeting, the registrant shall be ordered by the local board to perform work in lieu of induction in accordance with such agreement, but such order shall not be issued prior to the time that the registrant would have been ordered to report for induction if he had not been classified in Class I-O, unless he has volunteered for such work.

"(d) If, after the meeting referred to in paragraph (c) of this section, the local board and the registrant are still unable to agree upon a type of civilian work which should be performed by the registrant in lieu of induction, the local board, with the approval of the Director of Selective Service, shall order the registrant to report for civilian work contributing to the maintenance of the national health, safety, or interest as defined in section 1660.1 which it deems appropriate, but such order shall not be issued prior to the time that the registrant would have been ordered to report for induction if he had not been classified in Class I-O, unless he has volunteered for such work."

Section 1660.21 (c) of the Regulations

Section 1660.21 (c) of the Selective Service Regulations (32 C. F. R. § 1660.21 (c)) (E. O. 10328, 17 F. R. 1650, Feb. 22, 1952) provides:

"1660.21 *General provisions relating to orders by the local board to perform civilian work and performance of civilian work.*

• • • • •

"(c) Whenever at any time before the registrant has performed for a period of twenty-four consecutive months the work to which he has been ordered by the local board such work ceases to be available for performance by the registrant for any reason not due to the fault of the registrant such as, but not limited to, the cessation of the work or the termination of his employment by his employer, the registrant shall be ordered to perform the same type of work with another employer. If the registrant complies with this order, such transfer of employment shall not constitute a break in his required period of twenty-four consecutive months of performance of work."

Section 1660.30 of the Regulations

Section 1660.30 of the Selective Service Regulations (32 C. F. R. § 1660.30) (E. O. 10328, 17 F. R. 1650, Feb. 22, 1952) provides as follows:

"Failure or neglect to obey order to perform civilian work. Any registrant who knowingly fails or neglects to obey an order from his local board to perform civilian work contributing to the maintenance of the national health, safety, or interest in lieu of induction shall be deemed to have knowingly failed or neglected to perform a duty required of him under title I of the Universal Military Training and Service Act, as amended. When any registrant fails or neglects to obey any such order, his Cover Sheet (SSS Form No. 101) and contents shall be forwarded to the Director of Selective Service for a determination as to whether or not the registrant shall be reported to the Department of Justice for prosecution."

Section 1660.31 of the Regulations

Section 1660.31 of the Selective Service Regulations (32 C. F. R. § 1660.31) (E. O. 10328, 17 F. R. 1650, Feb. 22, 1952, except as otherwise noted) provides as follows:

"*Administration of registrants while performing civilian work.* (a) After a registrant who has been classified in Class I-O reports in response to an order from his local board for civilian work in lieu of induction and he has been classified in Class I-W, his Cover Sheet (SSS Form No. 101) and contents shall be forwarded to the State Director of Selective Service for the State in which the work is being performed. It shall be the responsibility of such State Director of Selective Service to see that the registrant performs the work to which he has been ordered by the local board for a period of twenty-four consecutive months, unless sooner released under the provision of section 1660.21. When the registrant has satisfactorily completed this work, the State Director of Selective Service shall return the registrant's cover sheet to the local board together with a letter stating that the registrant has satisfactorily completed his work. If the registrant should fail to perform such work, or should otherwise fail to perform his duties under title I of the Universal Military Training and Service Act, as amended, during the time that his cover sheet is in the custody of the State Director of Selective Service, the State Director of Selective Service shall forward the cover sheet to the Director of Selective Service for a determination as to whether or not the registrant shall be reported to the Department of Justice for prosecution.

"(b) When the civilian work to which a registrant is ordered by the local board in lieu of induction is to be performed at any place outside of the continental limits of the United States, the Territories of Alaska and Hawaii, Puerto Rico, the Virgin Islands, Guam, and the Canal Zone, and the registrant has reported for such work, the local board, after classifying the registrant in Class I-W, shall forward the registrant's Cover Sheet (SSS Form No. 101) and contents to the Director of Selective Service. It shall be the responsibility of the Director of Selective Service to see that the registrant performs the work to which

he has been ordered by the local board for a period of twenty-four consecutive months, unless sooner released under the provisions of § 1660.21. When the registrant has satisfactorily completed this work, the Director of Selective Service shall return the registrant's cover sheet to the local board together with a letter stating that the registrant has satisfactorily completed his work. If the registrant should fail to perform such work, or should otherwise fail to perform his duties under title I of the Universal Military Training and Service Act, as amended, during the time that his cover sheet is in the custody of the Director of Selective Service, the Director of Selective Service shall determine whether or not the registrant shall be reported to the Department of Justice for prosecution.

"(c) When the local board receives the cover sheet of the registrant from the Director of Selective Service or the State Director of Selective Service together with the letter stating that the registrant has satisfactorily completed his period of civilian work or a written notification that the registrant has been sooner released from such work by the Director of Selective Service under the provisions of § 1660.21, the local board shall mail the registrant a certificate evidencing his satisfactory completion of and release from civilian work and shall retain him in Class I-W and identify him on all records by following his classification with the abbreviation 'Rel.' until such time as he attains an age beyond the maximum age of liability for military service."

[Paragraph (c) amended by E. O. 10420, 17 F. R. 11593, Dec. 19, 1952]

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Statement Under Rule 15, Subdivision (b)

This is an appeal from a judgment of the United States District Court for the Southern District of New York sentencing the appellant to eighteen months' confinement in an institution to be designated by the Attorney General and imposing a fine of $1,000.00. The judgment is based upon the court's finding the appellant guilty of violating the Universal Military Training and Service Act of 1951.

By indictment returned and filed in the district court on November 7, 1955, appellant was charged with having violated Section 462, Title 50, United States Code (Appendix). In the indictment it was alleged among other things that appellant unlawfully and knowingly failed and neglected to perform and carry out one of the duties required of him under said act and the rules and regulations promulgated thereunder, in that he refused to report for civilian work contributing to the maintenance of the national health, safety and interest in lieu of induction, contrary to the form of the statute in such case made and provided.

Appellant, having been arrested, was duly arraigned before the United States District Court and admitted to bail on May 31, 1956. On such arraignment the appellant pleaded not guilty.

The cause proceeded to trial before Honorable Gregory F. Noonan without a jury, in the United States District Court for the Southern District of New York, July 3, 1956. The Government's evidence was heard, at the conclusion of which decision was reserved. Then on September 11, 1956, appellant's motion for judgment of acquittal was denied. He was found guilty. On October 5, 1956, appellant

was sentenced and committed, as above stated, to the custody of the Attorney General for a period of eighteen months and fined $1,000.00. No costs were assessed.

On October 5, 1956, the appellant duly filed his notice of appeal.

The record on appeal has been duly prepared, certified by the clerk and duly filed in this cause with this Court.

Docket Entries

[Rec. p. A]

Date	Proceedings	Clerk's Fees
11/7/55	Filed Indictment	
11-25-55	Deft appears in Court. Pleading adjourned until 12-16-55 Deft released on own recognizance and ordered fingerprinted Weinfeld J.	
11-25-55	Filed Notice of Appearance by Hayden C. Covington, 124 Columbia Heights, Bklyn. for Allen Turner.	
12/5/55	Filed Notice of Motion for an order dismissing indictment Ret 12/12/55	
12/12/55	Motion argued - Decision Reserved - Murphy J.	
5-22-56	Memo endorsed on motion papers filed 12-5-56. Motion denied, See US v Johnston and US v Patteson — US — decided May 21, 1956. This is an order. No settlement is necessary. Murphy J. (Mailed notice)	
5-23-56	Filed affdt. in opposition.	
	[Rec. p. B]	
5-31-56	Pleads not guilty. Released on own recognizance. Ryan J.	
7-3-56	Filed waiver of trial by jury. Approved Noonan J.	
7-3-56	Trial begun and concluded without a jury. Deft's motion for judgment of acquittal. Decision reserved. Noonan, J.	
JUL 3 1956	Filed Transcript of record of proceedings, dated 7-3-56	
9-11-56	Filed Opinion #22913- Defts motion for acquittal denied and on the record as a	

	whole, finds the deft guilty as charged. The Gov't is directed to place this matter on the calendar the first week of October, 1956 for sentencing. Noonan, J.
9-11-56	Filed stipulation of facts.
10-5-56	Filed Judgment # 61,181. Eighteen Months at a place of confinement to be designated by the Atty Genl. and fined $1000. and to stand committed until fine is paid or he is otherwise discharged according to law. Bail $1500. pending appeal. Paroled in custody of his attorney until 4 PM Oct. 5, 1956 to furnish bail. Noonan, J.
10-5-56	Issued commitment and copies.
10-5-56	Filed notice of appeal. (HCC) 5.00
OCT 10 1956	Filed Transcript of proceedings, dated 5-31-56
NOV 2 1956	Filed Transcript of record of proceedings dated July 3 Oct. 5, 1956
NOV 8 1956	Filed Transcript of record of proceedings dated 7-3-56 & 10-5-56
11-9-56	Filed Stipulation and annexed papers as to papers missing from record.

Indictment

[Rec. p. 32]

The Grand Jury charges:

On or about the 15th day of February, 1955, at the Southern District of New York, ALLEN D. TURNER, the defendant, did unlawfully, wilfully and knowingly fail and neglect to perform a duty required of him under and in execution of the Universal Military Training & Service Act and the Rules and Regulations duly made pursuant thereto, in that he failed and refused to obey an order of his Local Board to report for civilian work contributing to the maintenance of the national health, safety and interest in lieu of induction into the armed forces. (Title 50 Appendix, United States Code, Sections 456(j) and 462).

[Signed] [Signed]

Foreman. PAUL W. WILLIAMS,
United States Attorney

Judgment and Commitment

[Rec. p. 56]

On this 5th day of October, 1956 came the attorney for the government and the defendant appeared in person and by counsel,

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a finding of guilty by the Court, the defendant having waived trial by jury, of the offense of unlawfully, wilfully and knowingly failing and neglecting to perform a duty required of him under Universal Military Training & Service Act. (Title 50 appx. U.S.C. Secs. 456(j) and 462) as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of EIGHTEEN MONTHS and fined $1000. and to stand committed until fine is paid or he is otherwise discharged according to law. Bail $1500. pending appeal. Paroled in custody of his attorney until 4 PM Oct 5, 1956 to furnish bail.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

GREGORY F. NOONAN
United States District Judge.

Opinion

[Rec. p. 34]

NOONAN, D. J.

This case, a criminal action, was tried before this court without a jury, the right to trial by jury having been intentionally waived by defendant and counsel for both sides.

All of the evidence was stipulated to, or presented by the government and admitted by the court without objection by the defendant. At the close of the government's case, and of the entire case, the defendant rested and moved for acquittal. Decision was reserved.

There are no issues of fact herein, as such. The only issues are the significance of the evidence as it relates to both the facts and the law. A stipulation of

[Rec. p. 35]

facts, signed by the defendant, his attorney, and the attorney for the government is in evidence. (Government Exh. 2).

The defendant's main contentions on his motion for acquittal at the close of the government's case were:

1. that the order with which the defendant concededly failed to comply was not a valid order under the terms of the Universal Military Training and Serivce Act and the regulations promulgated in pursuance thereof, since it was not an order of the defendant's local board;

2. that there was a fatal variance between the indictment and the government's proof since the indictment alleges failure to obey an order of defendant's local board and the proof allegedly establishes failure to obey an order of the State Director's office.

3. that this court does not have jurisdiction of the case because the order was not one given by a local board; in addition to this reason, the defendant also argues that if any Federal court has jurisdiction, it would be the United States District Court for the Northern District of New York because the defendant's local board is in that district, and hence that the venue is improper.

Turning first to the last alleged ground for acquittal, that based on the assertion that this is the

[Rec. p. 36]

wrong district, it should be noted that this contention has already been ruled upon adversely to the defendant by another Judge of this court based on the recent decisions in the cases of *Johnston* v. *U. S.* and *U. S.* v. *Patterson* (decided together), 315 U. S. 215. Hence there remains no question of venue for this court to decide.

All of the other arguments urged by the defendant resolve themselves into one question:

By refusing to obey the directive of the State Director of Selective Service was the defendant refusing to obey an order of his local board?

So that the court's analysis will not appear to take place in a vacuum, a chronological summary of the facts in this case, based on the exhibits in evidence, follows:

The defendant, a resident of Syracuse, New York, registered with his local Selective Service board as required by law (Government Exh. 3).

In December of 1951, the local board mailed him a classification questionnaire (Government Exh. 3A), which he filled out and returned, indicating thereon that he was conscientiously opposed to war in any form and requesting the form for conscientious objectors (Government Exh. 3B) which was sent, filled out by the defendant, and returned to the board supported by a letter from his religious leader (Government Exh. 3C). Shortly thereafter,

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he was classified 1-O, a conscientious objector (Government Exhibits 3 and 3A).

Early in 1953, he was ordered to report for a physical examination (Government Exh. 3D), reported, and was found to be acceptable (Government Exh. 3F) although suffering from a hernia (Government Exh. 3E).

It should be noted that up to this point, there was abso-

lutely no evidence of any failure to cooperate fully with the authorities.

On February 20, 1953, defendant's local board mailed him its form entitled *"SPECIAL REPORT FOR CLASS 1-O REGISTRANTS"* (Government Exh. 3G), together with a Certificate of Acceptability (see Government Exh. 3A) requiring that the defendant fill out the Special Report Form and return it to the local board.

This form contained series of blanks to be filled in by the registrant entitled Work Qualification, Application for Approved Employment, and Important Civilian Work Experience (this last included an employment history, abilities and interests, languages and education). Defendant filled out no part of this form except the section on Work Qualification which provided for three types of jobs the registrant was qualified to do, these to be selected from a list supplied by the local board.

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In each of the blanks as to the types of work he offered to perform, he wrote the words:

"To serve Almighty God with all my soul and heart".

In a letter to his local board dated February 28, 1953, (Government Exh. 3H), the defendant wrote that, as one of Jehovah's Witnesses, he was obliged to preach from house to house, that his duty was not to man (but to God), and that Jehovah's Witnesses were God's ambassadors and not a part of this world since "their full hearted allegiance is to the most high God and to his kingdom. They do not take part in local, national, or international elections or politics. From such they are disengaged by the law of God . . . ".

He further stated that he was attending Syracuse University to better equip himself to do his work, and that he must spend all his energy, time, money and will power in the service of God. He then gave biblical quotations to support his argument that he was "unable to give support or service to anything but God's kingdom."

On March 3, 1953, the local board directed the defendant to report to the local employment office, since he had not submitted the required three types of civilian work which he offered to perform and which would contribute to the national health, safety or interest. This directive

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was accompanied by a form on which the employment office was to list three types of such employment decided upon after an interview (Government Exh. 3-I).

The employment office interviewer wrote the local board on April 3, 1953, that the defendant had reported, agreed to accept work in a particular hospital, and would be acceptable to the hospital except for his hernia, which was scheduled to be surgically corrected in June. The employment office interviewer expressed his view that the defendant would be unemployable until this condition was corrected, and suggested postponement of the matter until such time as he was physically capable of the work required by law (Government Exh. 3J).

On April 14, the local board, in answer to a letter from New York State Headquarters of the Selective Service System notified the New York State Headquarters of the defendant's condition, its recommendation that the defendant's case remain in status quo until after the operation, and that the defendant was to report back to the board by June 15th (Government Exh. 3K).

On June 23, 1953, the operating surgeon certified that the defendant would be fit for work on July 14th. (Government Exh. 3M).

On June 24, 1953, the local board in answer to a letter from the State Headquarters, notified the State Headquarters that the defendant's hernia was surgically

[Rec. p. 40]

corrected, that the surgeon stated that the defendant would be fit for work on July 14th, that the defendant was ordered to report to the employment office on July 15th, and that,

if a job could be found for him, he would be assigned to one on July 21st (Government Exh. 3L).

In a letter dated August 26, 1953, from the local board to the State Headquarters (in answer to a letter from the latter to the former), the local board stated that the defendant was not yet placed, but that he would be very shortly (Government Exh. 3N).

On a work form (LO-17) dated August 26, 1953, the employment office listed the defendant as qualified for the job of kitchen porter, which work was approved by the local board. No other types of work were listed nor did the registrant sign as to his willingness to perform the work. He did, however, do the work. A notation on the back of the form states that this defendant commenced work at Memorial Hospital, Auburn, New York, on August 27, 1953, as a kitchen porter receiving 95 cents an hour (Government Exh. 3-0).

In an order dated September 18, 1953, the local board ordered the defendant to report to the afore-mentioned hospital on September 28, 1953. At the bottom of this form, however, is a statement by the Personnel Director of the hospital that the defendant had reported

[Rec. p. 41]

on August 31, 1953 (Government Exh. 3P).

In a letter dated July 9, 1954, the Personnel Director of the Auburn Memorial Hospital wrote the local board that the defendant's employment had ceased on July 4, 1954. She wrote of the defendant's employment history with the hospital and his difficulties in adjusting to certain jobs. One paragraph of the letter reads as follows:

> "When his work performance and adjustment difficulties were discussed with him, Allen agreed with us that it seemed wisest to terminate his services in this hospital hoping he could find a more satisfactory work situation elsewhere. In our terminal interview, Allen stated that he planned to

contact your office personally to report this change of place of employment".
(Government Exh. 3-Q).

Further letters in evidence indicate that the local board notified the State Director of Selective Service of the defendant's status (Government Exh. 3R), and that the State Director's office notified the defendant of various employment opportunities elsewhere, as well as the defendant's obligation to seek such, and that he would be subject to assignment by the State Director if he failed to find employment himself (Government Exhs. 3S and 3T).

In a letter dated February 4, 1955, the State Director ordered the defendant to report for hospital employment to the Hudson River State Hospital, Poughkeepsie, New York, on February 16, 1955 (Government Exh. 3-U).

[Rec. p. 42]

In a letter dated February 7, 1955, the defendant wrote the State Director (the letter was actually addressed "Selective Service System" with the address of the building wherein were situated the offices of the State Director). This letter contained the defendant's statements that he then believed that he could not serve both God and man, and that he chose to serve God. He then stated his reasons for refusal to "substitute activities in worldly affairs and controversies" for his preaching duties, as well as his belief that he should be exempted from service. (Government Exh. 3V)

The defendant refused to report to the hospital as directed and has not served the required 24 consecutive months, nor has he been released from this duty by the Director of Selective Service. The Hudson River State Hospital is located in the Southern District of New York, and is a qualified place of employment for the performance of civilian work within the meaning of the Universal Military Training and Service Act, as amended. (Government Exh. 2).

The defendant never left the Northern District of New York during all of the times pertinent hereto (Government stipulation agreed to orally in open court at the close of its case).

This, then, composes the factual background of the problem. The law and regulations involved herein are as follows:

[Rec. p. 43]

Sec. (j) of the Universal Military Training and Service Act (62 Stat. 604) as amended, provides in part as follows: (Title 50 Appendix U.S.C. 456 (j)):

> "(j) Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local draft board shall, if he is inducted into the armed forces under this title, be assigned to non-combatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such non-combatant service, in lieu of such induction, be ordered by his local draft board, subject to such regulations as the President may prescribe to perform for a period equal to the period prescribed in Section 4(b) such civilian work contributing to the mainte-

nance of the national health, safety, or interests as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of Section 12 of this title to have knowingly failed or neglected to perform a duty required of him under this title . . .".

Section 4(b) of the aforementioned Act, (as amended) provides [Title 50 App. U.S.C. Sec. 454 (b)] for a period of service of 24 consecutive months.

The pertinent parts of the regulations contained in 32 C. F. R., Parts 1622 and 1660, are as follows:

[Rec. p. 44]

"Part 1622. *CLASSIFICATION RULES AND PRINCIPLES*"

"1622.14 Class I-O: *Conscientious Objector available for civilian work contributing to the maintenance of the national health, safety or interest.* (a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and non-combatant training and service in the armed forces."

"1622.16 *Class I-W: Conscientious Objector performing civilian work contributing to the maintenance of the national health, safety, or interest.* (a) In Class I-W shall be placed any registrant who has entered upon and is performing civilian work contributing to the maintenance of the national health, safety, or interest, in accordance with the order of the local board."

"Part 1660 - *CIVILIAN WORK IN LIEU OF INDUCTION*"

"1660.1 *Definition of appropriate civilian work.* (a) The types of employment which may be considered under the provisions of section 6(j) of title I of the Universal Military Training and Service Act, as amended, to be civilian work contributing to the maintenance of the national health, safety, or interest, and appropriate to be performed in lieu of induction into the armed forces by registrants who have been classified in Class I-O shall be limited to the following:

(1) Employment by the United States Government, or by a State, Territory, or possession of the United States or by a political subdivision thereof, or by the District of Columbia.

[Rec. p. 45]

(2) Employment by a nonprofit organization, association, or corporation which is primarily engaged either in a charitable activity conducted for the benefit of the general public or in carrying out a program for the improvement of the public health or welfare, including educational and scientific activities in support thereof, when such activity or program is not principally for the benefit of the members of such organization, association, or corporation, or for increasing the membership thereof.

(b) Except as provided in paragraph (a) (2) of this section, work in private employment shall not be considered to be appropriate civilian work to be performed in lieu of induction into the armed forces by registrants who have been classified in Class I-O."

"1660.20 *Determination of type of civilian work to be per-*

formed and order by the local board to perform such work.

(a) When a registrant in Class I-O is found acceptable for service after his armed forces physical examination or when such a registrant has failed to report for or to submit to armed forces physical examination, he shall, within ten days after notice of acceptability is mailed to him by the local board or within ten days after he has failed to report for or submit to armed forces physical examination, submit to the local board three types of civilian work contributing to the maintenance of the national health, safety, or interest as defined in Sec. 1660.1, which he is qualified to do and which he offers to perform in lieu of induction into the armed forces. If the local board deems any one of these types of work to be appropriate, it will order the registrant to perform such work, but such order shall not be issued prior to the time that the registrant would have been ordered to report for induction if he had not been classified in Class I-O, unless he has volunteered for such work.

[Rec. p. 46]

(b) If the registrant fails to submit to the local board types of work which he offers to perform, or if the local board finds that none of the types of work submitted by the registrant is appropriate, the local board shall submit to the registrant by letter three types of civilian work contributing to the maintenance of the national health, safety, or interest as defined in §1660.1 which it deems appropriate for the registrant to perform in lieu of induction. The registrant, within ten days after such letter is mailed to him by the local board, shall file with the board a statement that he either offers to perform one of the types of work sub-

mitted by the board, or that he does not offer to perform any of such types of work. If the registrant offers to perform any one of the three types of work, he shall be ordered by the local board to perform such work in lieu of induction, but such order shall not be issued prior to the time that the registrant would have been ordered to report for induction if he had not been classified in Class I-O, unless he has volunteered for such work.

(c) If the local board and the registrant are unable to agree upon a type of civilian work which should be performed by the registrant in lieu of induction, the State Director of Selective Service for the State in which the local board is located, or the representative of such State Director, appointed by him for the purpose, shall meet with the local board and the registrant and offer his assistance in reaching an agreement. The local board shall mail to the registrant a notice of the time and place of this meeting at least 10 days before the date of the meeting. If agreement is reached at this meeting, the registrant shall be ordered by the local board to perform work in lieu of induction in accordance with such agreement, but such order shall not be issued prior to the time that the registrant would have been ordered to report for induction if he had not been classified in Class I-O, unless he has volunteered for such work.

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(d) If, after the meeting referred to in paragraph (c) of this section, the local board and the registrant are still unable to agree upon a type of civilian work which should be performed by the registrant in lieu of induction, the local board, with the approval of the Director of Selective

Service, shall order the registrant to report for civilian work contributing to the maintenance of the national health, safety, or interest as defined in §1660.1 which it deems appropriate, but such order shall not be issued prior to the time that the registrant would have been ordered to report for induction if he had not been classified in Class I-O, unless he has volunteered for such work."

"1660.21 *General provisions relating to orders by the local board to perform civilian work and performance of civilian work.*

(c) Whenever at any time before the registrant has performed for a period of twenty-four consecutive months the work to which he has been ordered by the local board such work ceases to be available for performance by the registrant for any reason not due to the fault of the registrant such as, but not limited to, the cessation of the work or the termination of his employment by his employer, the registrant shall be ordered to perform the same type of work with another employer. If the registrant complies with this order, such transfer of employment shall not constitute a break in his required period of twenty-four consecutive months of performance of work."

"1660.30 *Failure or neglect to obey order to perform civilian work.*

Any registrant who knowingly fails or neglects to obey an order from his local board to perform civilian work contributing to the maintenance of the national health, safety, or interest in lieu of induction shall be deemed to have knowingly failed or neglected to perform a duty required of him under title I of the Universal Military Training and Service Act, as amended. When any

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registrant fails or neglects to obey any such order, his Cover Sheet (SSS Form No. 101) and contents shall be forwarded to the Director of Selective Service for a determination as to whether or not the registrant shall be reported to the Department of Justice for prosecution."

"1660.31 *Administration of Registrants While performing civilian work*

(a) After a registrant who has been classified in Class I-O reports in response to an order from his local board for civilian work in lieu of induction and he has been classified in Class I-W, his Cover Sheet (SSS Form No. 101) and contents shall be forwarded to the State Director of Selective Service for the State in which the work is being performed. It shall be the responsibility of such State Director of Selective Service to see that the registrant performs the work to which he has been ordered by the local board for a period of twenty-four consecutive months, unless sooner released under the provisions of §1660.21. When the registrant has satisfactorily completed this work, the State Director of Selective Service shall return the registrant's cover sheet to the local board together with a letter stating that the registrant has satisfactorily completed his work. If the registrant should fail to perform such work, or should otherwise fail to perform his duties under title I of the Universal Military Training and Service Act, as amended, during the time that his cover sheet is in the custody of the State Director of Selective Service, the State Director of Selective Service shall forward the cover sheet to the Director of Selective Service for a determination as to whether or not the registrant shall

be reported to the Department of Justice for prosecution."

Thus, the law (§6(j) of the Universal Military Training and Service Act) provides that a registrant classified as a conscientious objector "shall . . . be ordered by his local board, subject to such regulations as the President

[Rec. p. 49]

may prescribe, to perform for a period equal to the period prescribed in Sec. 4(b) . . . " (24 consecutive months) certain civilian work as indicated previously.

The regulations promulgated pursuant to the law provide that (Sec. 1660.21(c) supra) whenever, through no fault of his own, the registrant finds himself no longer employed at the work to which he was ordered by the local board, and before the 24 month work period has been completed, he . . . "shall be ordered to perform the same type of work with another employer".

The statute makes it clear that it is the local board that must order the registrant to perform civilian work which the local board deems appropriate. There is no clear indication, however, as to what authority is to order the registrant under the circumstances of this case to work for the subsequent employer.

Government Exhibits O and P are proof that the local board did deem the job of kitchen porter appropriate and did in fact order him to do his work at the hospital in Auburn. There is no question that the order to work in the category indicated by the local board was to remain in effect for the 24 month period without any further order to that effect required.

Thus, it is apparent that the local board designated the type of work to be performed, and the later

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directive of the State Director could not, and did not attempt to, supersede the order of the local board as to the type of work to be performed.

It should also be noted that once the registrant has re-

ported for the civilian work to which he was ordered by his local board, and has been classified by the local board in Class I-W, his file is forwarded to the State Director's office, whose responsibility it is to see to it that the registrant perform his assigned work (see Sec. 1660.31, supra).

The government views the above state of affairs as comparable to a serviceman's induction into the service, and the transfer of the registrant's file as comparable to the transfer of jurisdiction over the serviceman from the local board to the head of the branch of service into which the serviceman is inducted. From this it analogizes that, since the local board, having ordered a serviceman to report for service, is no longer concerned about his subsequent changes of station, so it is no longer concerned about "changes of station" of the registrant ordered by it to perform for a period of 24 months a particular type of work. This view is referred to specifically in the manual entitled "The Conscientious Objector Work Program Manual" published by the Director of Selective Service.

While the administrative manual referred to is entitled to some weight, it is, of course, totally invalid

[Rec. p. 51]

if it conflicts with the statute or the regulations promulgated pursuant to that statute.

The defendant urges that disobedience of the directive to report for new employment is not disobedience of an order of the local board, and hence that there is a fatal variance between the indictment and the proof. To this the government answers that the order referred to in the indictment was the initial work order requiring 24 months of such employment regardless of the ultimate "station" of the registrant; and indeed, if the contention of the government is correct as to what order was in fact disobeyed, there is no such variance. Such difference in viewpoint is, of course, the crux of this entire case, and the arguments as to the variance beg the basic question.

Another argument of the defendant urges the fact that

no meeting was ever held pursuant to Sec. 1620.20(c) of the regulations as to the subsequent work assignment.

On this point, however, it is the interpretation of this court that this regulatory requirement applied only to the initial determination of the type of work to be performed by the registrant, and, since the State Director was not attempting to change that type of work, no such meeting was required.

The defendant points to the wording of the heading of Sec. 1660.21 of the Regulations relying on the fact that the words used are "orders by the local board" to establish

[Rec. p. 52]

that orders in such cases may be made only by the local board; but this wording, by itself, it not convincing, since reference must also be had to Sec. 1660.31(a).

It is true that under the main heading of Sec. 1660.21 comes the provision that the registrant "shall be ordered to perform the same type of work with another employer"; but it is also true that once the registrant has commenced his first job and been reclassified 1-W, his file is forwarded to the State Director's Headquarters and he is placed under the aegis of that official.

It is a fact that the order of the local board to report for civilian employment specifically ordered him to report to a particular place of employment (Government Exhibit 3-P), and while the defendant concedes that another order changing the authorized place of employment need not be on any special form, he argues that it too should originate with the local board.

Despite the numerous citations submitted, the circumstances of this case make it one of first impression and require that the conclusion to be reached be based entirely on logic rather than stare decisis.

It is the conclusion of this court that the order disobeyed by the defendant was the original order of the local board, and not the reassignment by the State Director.

The original order specified the length and type of employment; and this court concludes that the mere fact

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that the order also gave the place of initial employment is no more restrictive than is an order to a potential serviceman to report to a particular place for induction.

In short, as respects the facts in this case, this court adopts the serviceman analogy urged by the government as valid.

Hence the order to Report for Civilian Work (Government Exh. 3P) issued on September 18, 1953, to the defendant in conformity with Section 1660.20 of the Selective Service Regulations was an order issued to the defendant by the defendant's Local Board. It was in full force and effect at the time the State Director of Selective Service directed Turner to report to the Hudson River State Hospital in Poughkeepsie to complete the required term of civilian work. The failure of the defendant to comply with the State Director's letter of February 4, 1955 (Government Exh. 3-U), was a violation of this local board order. The violation of this local board order constituted the crime charged in the indictment and the crime proved by the Government during the defendant's criminal trial. Consequently the court rules that there was no variance between the pleading and the proof.

The letter by the State Director of Selective Service to the defendant was not an order to perform civilian work. Such an order as that term is used in Section 1660.20(d) of the Regulations can only be issued by a local board.

[Rec. p. 54]

A State Director would clearly violate the Act if he were to issue such an order. However, once such an order is issued by the local board, and the class I-O registrant conforms to the order by reporting for civilian work, neither the Act nor the Regulations require the local board to reassign the registrant to another position if the initial work

assignment is terminated. The State Director of Selective Service who merely reassigns a registrant is not preempting the local board's jurisdiction, but is merely carrying out the responsibility imposed on a State Director by Section 1660.31 of the Regulations once the registrant reports for work in response to the local board order.

As to the defendant's contention that the order with which the defendant concededly failed to comply was not a valid order under the terms of the Selective Service Act, and the regulations promulgated in pursuance thereof, since it was not an order of the local board, this court obviously does not agree, but rather holds that the order was issued validly and pursuant to Section 1660.20 of the Regulations. Once the registrant receives his assignment by means of the Form 153 and reports for work, he is classified as I-W and passes beyond the jurisdiction of the local board until he completes the period of service ordered, or is released by the State Director of Selective Service. If the circumstances arise that requires a second

[Rec. p. 55]

assignment the State Director may make the assignment acting under Section 1660.31 of the Regulations.

Therefore, since the defendant did comply with the initial Order to Report for Civilian Work issued by his local board and was classified I-W, his case passed from the jurisdiction of the local board to the State Director for purposes of compliance with the work order. The letter from the State Director directing the defendant to report to the Hudson River State Hospital in Poughkeepsie, New York, was a proper exercise of the authority given the State Director by the Regulations (Section 1660.31). It was not a new order to report for civilian work but merely a direction to the defendant to comply with the outstanding local board order.

The facts as earlier set forth indicate clearly the defendant's refusal to comply with the order.

In accordance with the foregoing, this court hereby

denies the defendant's motions for acquittal and, on the record as a whole, finds the defendant to be guilty as charged.

The government is directed to place this matter on the calendar for the sentencing of this defendant during the first week of October 1956.

Dated, New York, N. Y.
September 11, 1956

GREGORY F. NOONAN
U. S. D. J.

Notice of Motion

[Rec. p. 61]

SIR:

PLEASE TAKE NOTICE that on the annexed affidavit of Hayden C. Covington, attorney for the defendant herein, a motion will be made before the United States District Court for the Southern District of New York, at Room 318, in the United States Court House, Foley Square, New York City, on the 16th day of December, 1955, at the opening of Court on that day or as soon thereafter as counsel can be heard, for an order dismissing the indictment in this case on the ground that the Court does not have jurisdiction of the offense because it was not committed in the Southern District of New York.

Dated: December 3, 1955.

HAYDEN C. COVINGTON

124 Columbia Heights
Brooklyn 1, New York
Main 5-1240

Attorney for Defendant

To: PAUL W. WILLIAMS, Esq.
United States Attorney
Southern District of New York
Foley Square
New York City

Motion to Dismiss

[Rec. p. 62]

MAY IT PLEASE THE COURT:

Now comes the defendant, Allen D. Turner, by and through his attorney, Hayden C. Covington, and makes this affidavit and moves the Court for an order to dismiss the indictment against the defendant for the reason that the Court does not have jurisdiction of the offense. He shows to the Court as follows:

The indictment filed against the defendant in this case, among other things, reads as follows:

> On or about the 15th day of February, 1955, at the Southern District of New York, ALLEN D. TURNER, the defendant, did unlawfully, wilfully and knowingly fail and neglect to perform a duty required of him under and in execution of the Universal Military Training and Service Act and the Rules and Regulations duly made pursuant thereto, in that he failed and refused to obey an order of his Local Board to report for civilian work contributing to the maintenance of the national health, safety and interest in lieu of induction into the armed forces. (Title 50 Appendix, United States Code, Sections 456(j) and 462).

It is to be noted that the indictment charges that the offense occurred in the jurisdiction of the Southern District

[Rec. p. 63]

of New York. This allegation is contrary to the draft board file that was submitted to the grand jury and which will have to be submitted to this Court at the trial in proof of the Government's case. The draft board file shows that the offense was not committed in the Southern District of New York, that the defendant never did enter the Southern District of New York, that his local board is not located in the Southern District of New York and that the failure and refusal to obey the order of defendant's local board occurred in the Northern District of New York and not the Southern District of New York. Accordingly the indictment should be dismissed because this Court does not have jurisdiction.

Defendant's attorney has examined the photostatic copy of the draft board file of Allen R. Turner that is now in the possession of the United States Attorney. The examination of the file discloses facts which support this motion. These facts hereafter stated are based upon or quoted from the pertinent parts of the draft board file.

The defendant was born on February 18, 1933. He is registered with Local Board No. 58, 1200 Chimes Building, Syracuse 2, New York. (4, 5)* The local board mailed the classification questionnaire to him on December 4, 1951. (4, 5) He answered the questions in the questionnaire and filed it with the local board on December 17, 1951. (5) He gave his name, address, telephone number and social security number. (6) He showed his education (10) as well as place and date of birth. (10) He showed he was conscientiously opposed to participation in war in any form by signing Series XIV of the questionnaire. (11) Special Form for Conscientious Objector

* Figures shown in parentheses herein refer to penciled page numbers shown in the upper right hand corner of the papers in the draft board file.

[Rec. p. 64]

which was mailed to him by the local board on December 17, 1951, was filled out and filed on December 28, 1951. (14) In this form the defendant showed he was conscientiously opposed to his participation in both combatant and non-combatant military service. (14-17) Accompanying this form was a statement by the presiding minister of the Syracuse Northeast congregation of Jehovah's Witnesses, dated December 28, 1951, certifying that Allen Turner regularly attended meetings of the congregation and was in attendance at the Theocratic Ministry School. (80)

On January 8, 1952, the local board placed the defendant in Class I-O, which classification made him liable for the performance of civilian work in lieu of induction into the armed forces. (12) This classification was continued on October 21, 1952. (12) On January 27, 1953, he was directed to report for armed forces physical examination on February 3, 1953. (12, 79) He was found to have a hernia (74) but was accepted and so informed on February 20, 1953. (12, 71) He was thereafter sent by the State Employment Office to the Good Shepherd Hospital but was not accepted because of the hernia. (58) He was thereafter operated on for the hernia on May 28, 1953. (54) On September 18, 1953, he was ordered to report for civilian work at the Memorial Hospital, Auburn City, New York, on September 28, 1953. (12, 44) He had previously found employment at this place on August 31, 1953. (3, 38, 44) On July 4, 1954, he was discharged from this place of employment because his position was abolished and he could not adjust himself to another type of work. (38, 39) Efforts were made by the State Director to relocate him. (33-36) On February 4, 1955, the State Director wrote to the defendant as follows: "Since your services at the Auburn Memorial Hospital were terminated before you had completed the re-

[Rec. p. 65]

quired 24 months, you are hereby directed to report to Mr. Joyce at the Hudson River State Hospital, Poughkeep-

sie, New York, on Wednesday, February 16, 1955 at 8:30 a.m. for hospital work." A carbon copy was directed to the local board and to the Hudson River State Hospital. (29) On February 7, 1955, the defendant replied to the letter from the State Director, stating that he was not going to report to the Hudson River State Hospital at Poughkeepsie, New York. He wrote this letter from his address in Syracuse, New York, and addressed it to the Selective Service System headquarters at 98 Fuller Road, Albany 5, New York. The letter appears in the file. (19-20) On February 9, 1955, a letter was written to the Director of Selective Service at Washington, D. C., by the office of the State Director, as follows:

> On August 31, 1953 the above-named began his hospital work at Auburn City Hospital, Auburn, New York and on October 6, 1953 he was classified in Class I-W. The assignment was secured for the registrant by the New York State Employment Service.
>
> On July 4, 1954 the services of Mr. Turner were terminated by the hospital for the reason given in their letter dated July 9, 1954 addressed to the local board. Since this termination was not due to the misconduct of the registrant, steps were taken to secure similar employment for him. On November 29, 1954 a letter was written to the registrant from this headquarters advising him of approved agencies where vacancies might possibly exist. Not hearing from him in response to our letter, we wrote to him again on January 6, 1955. No reply was received however and on February 4, 1955 with the permission of the State of New York Department of Mental Hygiene, the registrant was ordered by letter to the Hudson River State Hospital, Poughkeepsie, New York to begin employment on February 16, 1955.
>
> Enclosed is a letter dated February 7, 1955

received from the registrant.

We would appreciate receiving your advice as to what action should be taken now since it is apparent that Mr. Turner does not intend to report to the Hudson River State Hospital on February 16, 1955.

Enclosed is the complete file of Mr. Turner. See the file (2).

[Rec. p. 66]

On March 4, 1955, the Director of Selective Service wrote to the State Director at Albany, New York, as follows:

> Reference is made to your letter dated February 9, 1955, in which you requested advice as to action to be taken in the case of the above-named registrant who indicated that he did not intend to report to the Hudson River State Hospital on February 16, 1955.
>
> If this registrant actually did not report for employment, the statement required by Operations Bulletin No. 108 should be prepared and filed in the cover sheet. The cover sheet may then be referred to this Headquarters for consideration as to prosecution under section 1660.31 (a) of the regulations.
>
> The cover sheet is returned herewith.

See the file. (1, 18)

The defendant did not leave Syracuse. He did not report to his local board at Syracuse and he did not report to the Hudson River State Hospital at Poughkeepsie, New York.

WHEREFORE the defendant prays the Court for an order dismissing the indictment in this case for the reason that this Court does not have jurisdiction because the defendant did not report at his local board, he did not report to the hospital, he did not enter the Southern District of New York and he did not leave the Northern District of New

York. His refusal to obey the order started and ended in the Northern District of New York and if any offense was committed by the defendant it was committed in the Northern District of New York and not in the Southern District of New York.

ALLEN TURNER

by [S] Hayden C. Covington
HAYDEN C. COVINGTON

STATE OF NEW YORK, County of Kings, ss:

HAYDEN C. COVINGTON, being duly sworn, says:

I have read the foregoing affidavit and motion to dismiss the indictment in this case. I am authorized to make this af-

[Rec. p. 67]

fidavit in lieu of the same being made by the defendant because he is out of the district, being a resident of Syracuse, New York, and because I am attorney of record for said defendant. I have read the foregoing motion and affidavit and the contents thereof are true except as to the subject matters that are based on information and belief and to those matters I believe it to be true and correct.

[S] Hayden C. Covington
HAYDEN C. COVINGTON

Subscribed and sworn to before me
this 3rd day of December, 1955:
WILLIAM K. JACKSON
Notary Public, State of New York
No. 24-1939100
Qualified in Kings County
Commission Expires March 30, 1957

Order Denying Motion to Dismiss

[Rec. p. 68]

May 22, 1956

Motion denied, see U. S. v. Johnston and U. S. v. Patteson, — U. S. —, decided May 21, 1956.

This is an order. No settlement is necessary.

THOS F MURPHY
USDJ

Memo Endorsed

Affidavit in Opposition

[Rec. p. 69]

STATE OF NEW YORK
COUNTY OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK } ss.:

JOHN ARTHUR KEEFFE, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in charge of this matter, and am fully familiar with the facts of this case.

2. The Government concedes the fact that the defendant in this case never left the Northern District of New York. However, on the basis of *United States* v. *Johnston* and *United States* v. *Sokol*, (3rd. Cir., 1955), (unreported decision filed December 1, 1955, and cases cited therein), the Government feels the defendant's motion to dismiss on the grounds of lack of venue-jurisdiction is without foundation.

WHEREFORE, deponent respectfully prays that defendant's motion be in all respects denied.

JOHN ARTHUR KREFFE,
Assistant U.S. Attorney.

Sworn to before me this
12th day of December, 1955.
DANIEL TANENBAUM
Notary Public, State of New York
Qualified in Kings County
No. 24-3930200
Commision Expires March 30, 1957

Stipulation of Facts

[Rec. p. 70]

IT IS HEREBY STIPULATED AND AGREED by and between the defendant, ALLEN D. TURNER, his counsel HAYDEN C. COVINGTON, and the UNITED STATES OF AMERICA, by PAUL W. WILLIAMS, United States Attorney and JOHN T. MORAN, JR., Assistant United States Attorney, of counsel, as follows:

1. That the defendant is the person named in the indictment.

2. That the Selective Service System Cover Sheet (SSS Form 101) bearing the defendant's name and Selective Service No. 30-58-33-49, which will be offered in evidence at the trial hereof, is the Selective Service file of the defendant and all papers in this defendant's file are contained therein.

3. That the defendant Allen D. Turner, was ordered to report for civilian work contributing to the maintenance of the national health, safety or interest at the Auburn Memorial Hospital in Auburn, New York on September 28, 1953 and that he did report as ordered.

4. That the employment of the defendant Allen D. Turner at Auburn Memorial Hospital was terminated on

July 4, 1954 and that the defendant was then directed to report to the Hudson River State Hospital in Poughkeepsie, New York, located in the Southern District of New York

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and within the jurisdiction of this court on February 16, 1955 for civilian work to complete the required twenty-four (24) consecutive months of employment.

5. That the defendant refused and neglected to report on February 16, 1955 to the Hudson River State Hospital in Poughkeepsie, New York as directed and he has not served the required twenty-four (24) consecutive months of civilian employment nor has he been released from such duty or obligation by the Director of Selective Service.

6. That the Hudson River State Hospital in Poughkeepsie, New York is a qualified place of employment for the performance of civilian work within the meaning of the Universal Military Training and Service Act, as Amended.

Dated: New York, N. Y., July [blank], 1956.

[S] Allen Turner
ALLEN D. TURNER,
Defendant

[S] Hayden C. Covington
HAYDEN C. COVINGTON,
Attorney for Defendant

PAUL W. WILLIAMS,
United States Attorney

By: [S] John T. Moran, Jr.
JOHN T. MORAN, JR.,
Assistant United States Attorney.

Stenographer's Minutes

[Rec. p. 1]

Before:

HON. GREGORY F. NOONAN, D.J.,

New York, N. Y.
July 3, 1956, 2.00 p.m.

APPEARANCES:

PAUL W. WILLIAMS, Esq., United States Attorney,
for the Government;

By JOHN T. MORAN, Esq., Assistant United States
Attorney.

HAYDEN C. COVINGTON, Esq.,
Attorney for Defendant.

• • •

[Rec. p. 11]

MR. MORAN: Having failed to advise the Board in the special form for conscientious objectors of the three types of work that he was qualified to do, the Local Board directed Forms LO-16 and -17 to the defendant Allen D. Turner, directing him to report to the New York State Employment Office for an interview for the purpose of determining his qualifications for civilian work.

The Government now offers as its Exhibit 3J a letter dated April 3, 1953, from the Division of Placement and Unemployment Insurance of the New York State Employment Service, written to the Selective

[Rec. p. 12]

Service System, Local Board 58, in Syracuse, New York.

(Marked Government Exhibit 3J in evidence.)

MR. MORAN: This letter indicates that Turner, during the course of his interview had agreed to accept employment at the Hospital of the Good Shepherd in Syracuse. However, because of Turner's hernia condition, the hospital declined

to employ him until such time as the condition was cured by operation.

The next entry in the minutes of the actions of the Local Board indicate that on April 3, 1953, Selective Service Form No. 390, which is a postcard, was mailed to the defendant requesting his appearance before the Local Board on April 7, 1953, at 8:00 p.m.

The Government offers in evidence as its Exhibit 3K a letter from the Local Board No. 58 to the New York State Headquarters of the Selective Service System, dated April 14, 1953.

(Marked Government's Exhibit 3K in evidence.)

MR. MORAN: The letter indicates that Turner appeared before the Local Board and informed it of the assignment to Good Shepherd Hospital. Turner also informed the Board at this appearance that he had been ordered to have an operation and, as a result of that appearance, the Board recommended Turner's case

[Rec. p. 13]

be held in status quo until after the operation and directed Turner to report not later than June 15, 1953, back to the Board.

The Government now offers in evidence as Exhibit 3L a letter from the Local Board 58 to Selective Service System Headquarters, New York State, dated June 24, 1953.

(Marked Government's Exhibit 3L in evidence.)

MR. MORAN: The letter indicates that Turner had been operated upon by Dr. Carl W. Clark, who certified that the registrant would be able to work on July 14, 1953.

I now offer in evidence as Government's Exhibit 3M a certification by Dr. Carl W. Clark, dated June 23, 1953.

(Marked Government's Exhibit 3M in evidence.)

MR. COVINGTON: What paper number is that?

MR. MORAN: 55.

Government now offers in evidence as its Exhibit 3N a letter from the Local Board No. 58 to New York State

Headquarters of the Selective Service System, dated August 26, 1953.

(Marked Government's Exhibit 3N in evidence.)

MR. MORAN: This letter from the Local

[Rec. p. 14]

Board to state headquarters indicates that the New York State Employment Service had advised the Board that it would place Turner in Auburn City Hospital within a week.

I will offer as Government Exhibit 3-O Selective Service Form LO-17, dated August 26, 1953.

(Marked Government's Exhibit 3-O in evidence.)

MR. MORAN: This form indicates that the defendant, Allen D. Turner, had been found qualified by an interview of the New York State Employment Service to perform work as a kitchen porter and this assignment was approved as shown by the signature of the chairman of the Local Board, Mr. Lattif.

The Government now offers as its Exhibit 3P an order to report for civilian work and statement of employer, Selective Service Form 153, dated September 18, 1953.

(Marked Government's Exhibit 30 in evidence.)

MR. MORAN: This form indicates that Turner was directed to report on September 28, 1953, to the Memorial Hospital in Auburn, New York.

The statement of employer on the bottom of that page indicates that the defendant reported for such assignment on the 31st day of August, 1953, and that statement of employer is signed by C. F. Harrienger,

[Rec. p. 15]

Personnel Director.

The next entry in the Board minutes shown on the classification questionnaire indicates that Turner was classified 1-W on October 6, 1953. The 1-W classification is the classification in which a conscientious objector is placed once he reports for civilian work.

The Government now offers as Exhibit 3Q a letter from

the Auburn Memorial Hospital to the Local Board 58 in Syracuse, New York, dated July 9, 1954.

MR. COVINGTON: What is the paper number?

MR. MORAN: 38.

(Marked Government's Exhibit 38 in evidence.)

MR. MORAN: With your Honor's permission I would like to read this letter into the record:

> "Selective Service System, Local Board 58, 500 Salina Street, Syracuse, New York. Re: Allen D. Turner, No. 30-58-3349.
>
> "Gentlemen: We are writing to you in regard to Allen D. Turner, of 219 Ashworth Place, Syracuse, New York.
>
> "On August 31, 1953, Allen D. Turner reported to Memorial Hospital for civilian work as ordered by the Selective Service Board No. 58 of Syracuse,
>
> [Rec. p. 16]
>
> New York.
>
> "On July 4, 1954, Allen Turner's employment with us was terminated.
>
> "There were several factors which contributed to our decision to ask Allen to terminate his services with us. When Allen first came to our hospital he worked as a porter in our dietary department. He was in this position until January, 1954 and gave satisfactory service. In January of 1954, a new position of hospital messenger was created. Allen took the initiative in requesting that he be considered for this position. As of January 11, 1954, Allen became our messenger man, a position which he held until March, when the position had to be abolished as not absolutely necessary. Allen enjoyed his work as messenger and gave very satisfactory service within the hospital although he was somewhat careless in the use of our hospital truck when he had to go on errands downtown.

"When this position was abolished, we tried to find a new position suitable for Allen. He went to work as a porter in the laundry, a position which he filled only four weeks because the

[Rec. p. 17]

work proved to be beyond his physical strength and because the work environment wasn't suitable for him. Allen was then reinstated in his first position as kitchen porter. Although Allen tried very hard to fit back into the situation, it soon became apparent that he had been required to make too many work adjustments and thus he was not able to perform the work required of him.

"Allen admitted frankly that he found it difficult to adjust to different department heads in such rapid succession. We observed that Allen functioned better under a man department head than he did under a woman, as was the case in the dietary department.

"When his work performance and adjustment difficulties were discussed with him, Allen agreed with us that it seemed wisest to terminate his services in this hospital, hoping he could find a more satisfactory work situation elsewhere.

"In our terminal interview Allen stated that he planned to contact your office personally to report this contemplated change of employment.

[Rec. p. 18]

"On the whole, Allen gave satisfactory service during his employment period with us. He is a boy who easily becomes the target of more virile men who sense his personality weaknesses and are inclined to take advantage of him. Allen does become confused if pressed too hard or if subjected to having several different 'bosses.' If dealt

with in a positive and encouraging manner he responded.

"We trust this information will be of usefulness to you in considering a place for Allen Turner.

"Cordially yours,

Ellen M. Stoker,
Personnel Director."

The Government now offers as its Exhibit 3R a letter dated July 23, 1954, from Local Board 58 to the State Director of Selective Service, Albany, New York.

(Marked Government's Exhibit 3R in evidence.)

MR. MORAN: This letter indicates that the Local Board mailed Turner Form 152, that is the special form for conscientions objectors, requesting that the registrant or the conscientious objector

[Rec. p. 19]

select three types of work in which he is qualified to perform civilian work.

MR. COVINGTON: What is the number of that, please?

MR. MORAN: 37.

And on September 28, 1954, another such form, 152, was sent to Turner requesting that he inform the Board of his qualifications for subsequent civilian work assignment.

I have indicated to counsel for the defense that the reference to Section 152 is on the minutes of the questionnaire.

I will offer as Government's Exhibit 3S a letter dated November 29, 1954, to the defendant Allen D. Turner, from Richard F. Saville, Operations Officer.

(Marked Government's Exhibit 3S in evidence.)

MR. MORAN: This letter requests Turner to inform Selective Service of his efforts to secure employment, and I state at this time that the Form 152 mailed on August 13, 1954, and the Form 152 mailed on September 28, 1954,

and this particular letter sent to the registrant on November 29, 1954, were not answered by the defendant.

[Rec. p. 20]

I will offer as Government's Exhibit 3T a letter—a photostat of a letter dated January 6, 1955, written to the defendant by Richard F. Seville, Operations Officer. The letter requests Turner for an immediate response as to his efforts in obtaining employment.

MR. COVINGTON: Is that page 30?

MR. MORAN: That's correct.

(Marked Government's Exhibit 3T in evidence.)

MR. MORAN: The Government now offers as its exhibit 3U a letter dated February 4, 1955, to Allen D. Turner from the State Director of Selective Service.

(Marked Government's Exhibit 3U in evidence.)

MR. MORAN: The letter reads as follows:

> "Mr. Allen D. Turner, 219 Ashworth Place, Syracuse, New York.
>
> "Dear Mr. Turner: Since your services at the Auburn Memorial Hospital were terminated before you had completed the required 24 months, you are hereby directed to report to Mr. Joyce at the Hudson River State Hospital, Poughkeepsie, New York, on Wednesday, February 16, 1955, at 8:30 a.m. for hospital work.

[Rec. p. 21]

> "Sincerely yours,
>
> W. H. Boughton, Colonel
> State Director."

MR. COVINGTON: What is the page number?

MR. MORAN: 29.

I now offer as Government Exhibit 3V a letter dated February 7, 1955, from Allen Turner to Selective Service System, Albany, New York.

(Marked Government's Exhibit 3V in evidence.)

MR. MORAN: The letter reads as follows:

"Selective Service System, 98 Fuller Road, Albany 5, New York.

"Gentlemen: I acknowledge your letter concerning my general welfare but after further study of the Bible I see that I cannot serve both God and man. I must serve one or the other. I choose to serve Jehovah.

"As one of Jehovah's Witnesses I have dedicated my life to Almighty God. I acknowledge God as the supreme being and the provider of eternal life. For we learn from the Bible that Christ's kingdom is no part of this old world. Christ Jesus emphasized this when he said, 'If my kingdom was part of this world my followers would have fought for it, but as it is, my kingdom

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is not from this source.'

"So, as true followers of Christ Jesus, Jehovah's witnesses are no part of this world. Because they are no part of this system of things, they do not meddle or take part in the affairs and controversies of this old world. They are absolutely neutral toward the political disputes and international controversies and combats of this world. They take no active or violent part for either side but pay their vows to God and always advocate His kingdom and way of salvation.

"So, as ambassadors of 'God's new world,' where righteousness is to dwell, we tell the people that these are the last days of this old system of things that Christ foretold at Matthew 24 and at Matthew 24:14 Christ foretold that in these last days 'This good news of the kingdom will be preached in all the inhabited earth for the pur-

pose of a witness to all the nations, and then the accomplished end will come.'

"So now each and every witness who is under vow to Jehovah through Christ must obey the prophetic demand and fulfill his commission as

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an ordained minister of God of the good news of the kingdom.

"For this reason Christ foretold at Luke 21:12 that his people would be hated by all nations. 'They will deliver you up to the synagogues and prisons. You will be hailed before kings and governors *for the sake of My name.*'

"Joseph [sic] stated at John 15:20: 'A slave is not greater than his lord. If they have persecuted me, they will persecute you also.'

"For this reason alone would they be persecuted by all nations because of their enduring love *to serve the Creator* instead of the creatures.

"Jehovah's Witnesses love the name of their God and will always stand up for it. They know they must obey God rather than man, Acts 5, 29, 32.

"So you can see that my obligations to Jehovah God forbid me to become involved in entanglements with this system of things by partaking in any duties as substituting for military duties for my purpose is to preach the kingdom message as outlined in God's written words, the Bible.

"No place in the Bible is there a command to

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substitute activities in worldly affairs and controversies for my preaching duties. I am controlled by a belief in relation to a supreme being involving duties superior to those arising from any human relations, including any earthly relation to Caesar.

"The United States of America Selective Service Act of 1948 has given us a policy for the deferment of conscientious objectors and also for the exemption of those under vows to God. Section 6(j) provides for the deferment of 'any person' whose training and belief, or mission in a relation to a supreme being involved in duties arising from those under human relation, prevents a person from turning aside from those duties which he owes to the supreme being.

"Also, the Thirteenth Amendment to the United States Constitution clearly states 'Neither slavery nor *involuntary servitude,* except as a punishment for crime, whereof the party shall have been duly evicted [properly *convicted* (see exhibit)], shall exist within the United States or any place subject to their jurisdiction.'

"So you see that I would not only be disobeying God's laws but also the laws of the land.

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I hope you will take this letter into consideration before you render a verdict in my case.

"Sincerely yours,

Allen D. Turner."

I would again refer your Honor to the stipulation of facts entered into by the Government and the defendant. No. 5 thereof states "that the defendant refused and neglected to report on February 16, 1955, to the Hudson River State Hospital in Poughkeepsie, New York, as directed, and he hasn't served the required twenty-four (24) consecutive months of civilian employment, nor has he been released from such duty or obligation by the Director of Selective Service."

The Government now rests at this point, your Honor.

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Motion for Judgment of Acquittal

[Rec. p. 26]

I would like, if it please the Court, at this time to make a motion for a judgment of acquittal. Now comes the defendant, at the close of the evidence, and respectfully moves the Court to enter a judgment of acquittal for each of the following reasons:

First, the undisputed evidence shows that the defendant wasn't ordered to do work at the Poughkeepsie State Hospital by his Local Board, as is required by the Selective Service regulations and by the Act. And the evidence shows that he was ordered on February the 4th, 1955, by the State Director, to proceed to the Poughkeepsie State Hospital and there perform civilian work, which was not in conformity to the Selective Service regulations.

[Rec. p. 27]

THE COURT: Excuse me—

MR. COVINGTON: Yes, your Honor.

The second reason, your Honor, for the motion for the judgment of acquittal is that the indictment has alleged that he violated an order of the Local Board. Whereas the proof shows, if anything, that it was an order of the State Director, and consequently there is a legal variance in that respect.

The third ground is that the evidence in this case shows that this Court doesn't have jurisdiction, since the Act and the regulations predicate that before the Court would have jurisdiction, that the defendant be ordered to do this work by the Local Board. There is no provision in the Act giving jurisdiction as to the State Director to make the order, and consequently a failure to obey the order of the State Director is not within the jurisdiction of this Court.

And if there is any jurisdiction vested in the federal courts anywhere, it would be in the Northern District of New York, where the Local Board was located; also, where the State Director's office is located that made the order.

Wherefor[e], for each of these three reasons the defend-

[Rec. p. 28]

ant prays your Honor to find the defendant not guilty and enter a judgment of acquittal.

THE COURT: I will reserve decision on your motions, Mr. Covington.

* * *

Notice of Appeal

[Rec. p. 57]

Name and address of appellant are: Allen D. Turner, 219 Ashworth Place, Syracuse, New York.

Name and address of appellant's attorney are: Hayden C. Covington, 124 Columbia Heights, Brooklyn 1, New York.

Offense is a violation of the Universal Military Training and Service Act by refusing to perform work as a conscientious objector.

Concise statement of judgment is a judgment committing the appellant to an institution to be designated by the Attorney General for a period of 18 months and $1000 fine.

Defendant-appellant is now at large on bail which has been allowed pending appeal and is not confined in any institution.

I, the above-named defendant-appellant, hereby appeal to the United States Court of Appeals for the Second Circuit from the above judgment.

Dated, October 5, 1956.

ALLEN D. TURNER
Defendant-Appellant

HAYDEN C. COVINGTON
Attorney for Defendant-Appellant

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